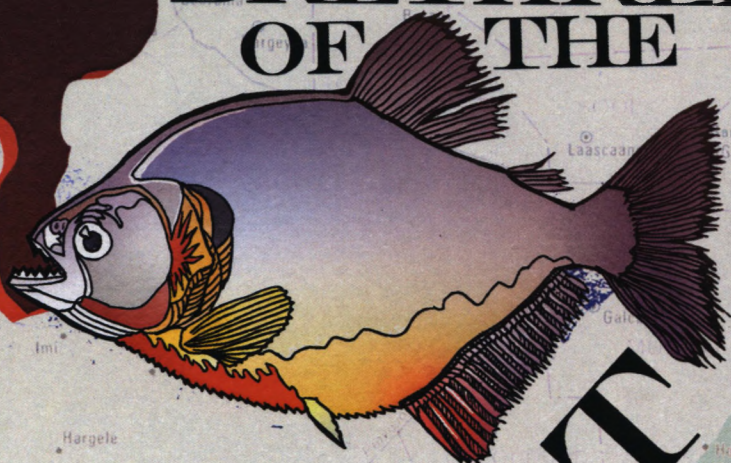


BRETHREN OF THE



COAST

ISKASHOTO
TRANSLATED BY
VINCENT SCURVY

Som



ISKASHATO

is a temporary autonomous collective. In Somali, the name means “people who put effort, knowledge, and means of production in common, in order to create or transform and to share in an egalitarian way.”

Brethren of the Coast

Memoir in defense of
the Somali pirates,
hunted down by all world powers

by Iskashato

revised and expanded edition
(2016)

english translation by vincent scurvy
(2017)

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Contents

i	Foreward
1	Who Are the Predators? Despoliation and Pollution in the Ruins of the Somali State
33	Little Plunders and Big Operations Military Repression
47	Punish Unresigned Poverty The Legal Arsenal
69	Piracy trials on French soil
70	The Ponant Trial
94	The Carré d'As Appeal Trial
99	Interview with Yusuf Mohamed Ahmed
103	The Tanit Trial
132	Somali Pirates in French Prisons
144	After Prison, More Prison
145	The Teltow Drama
150	Appendices
151	I. Survey of counter-piracy operations in the Indian Ocean
153	II. Non-exhaustive list of pirates and fish- ermen killed during military operations
155	III. Piracy risk forecast
156	IV. Piracy from a German perspective
159	V. Protection teams at sea, welcome aboard

FOREWARD

Have you ever heard of Puntland? It's a region of ex-Somalia on the far end of the Horn of Africa, effectively independent since the breaking up of the post-colonial Somali State in 1991. Armed disorder there is much more peaceful than in the southern part of the country, where Islamists and tribal groups heedlessly kill one another under the passive gaze of an "international community" who can't seem to do anything about it.

Excluded from the "entente between [African] nations," the inhabitants of Puntland are, as they experience their tribulations, rarely mentioned in the western media... to such an extent that, when the coasts of the region were devastated by the terrible tsunami of December 2004, the above-mentioned "international community"—with all its tear-shedding over dead tourists in South Asia—completely ignored the distress of the coastal population. It required the appearance, the following year, of highly active pirates from the region for the press to get interested in this land without a real state (aside from a few penitentiaries subsidized by the West) and without a trace of tourism (if you don't count a few mercenaries)—and this was simply to blast it with curses.



As the "piratologist" Peter Lamborn Wilson (better known under the pseudonym Hakim Bey) wrote, *"the second boat ever built was probably a pirate ship. When Sumerians and Egyptians sailed to 'the Land of Punt' 5,000 years ago seeking apes and ivory, gold and copper, no doubt*

some proto-Blackbeard on a reed raft was already dogging their wake." The seas bathing the coasts of the Arabian peninsula and the Horn of Africa have for time immemorial been favorable to piracy, contraband, and all sorts of trafficking in which a Rimbaud or a Monfreid barely dipped.

At the end of the 17th century, piracy in the Indian Ocean saw a brief golden age, favored by the initial ruggedness of the "globalization" of merchant exchange. Buccaneers, like François Misson or the Englishman Thomas Tew, by then had established mysterious colonies on Madagascar, serving as bases for the pillage of the Mongolian emperor's vessels as well as those of European merchants. These colonies, the material traces of which seem to have completely disappeared, were described (by writers of the time, such as Daniel Defoe, who went to prisons and places of ill repute to collect sailors' stories which were steeped in piracy) as applying on land the communitarian and egalitarian principles which dominated aboard pirate ships of this time.¹ These are what Peter Lamborn Wilson called "pirate utopias,"² which proliferated in the Caribbean before being annihilated *manu militari* by colonial powers or changing into "respectable" commercial ports, integrated into the slave-export economy of the region. As for the Madagascan colonies, it seems that they were absorbed by "primitive" societies of the regions where they attempted to settle, or at least their existence was quite short, perhaps even purely mythological.

1 See Marcus Rediker. *Villains of All Nations: Atlantic Pirates in the Golden Age*. Beacon 2005.

2 See his *Pirate Utopias*. Autonomedia 2013.

Piracy has certainly engendered plenty of myths. First of all there is the one about the demonic cruelty of sea crooks, propagated by hack journalists and magistrates serving the colonial states and merchant companies. The literature quickly seized on this maritime epic, so suited for romanesque exaggeration, and over the course of adventure novels, the image of the pirate changed, becoming the one that, all things considered is rather positive—and is very much enjoyed in children's imaginations—and prevails in fiction: the dropout sea-wolf in the colorful costume, the intrepid refuser, the individualist entrepreneur, if not also a good comrade...

There is, of course, a bit of truth to the clichés: since more often than not sailors mutinied, the characters of the golden age of buccaneers were in revolt against a suffocating and strictly hierarchical society, whose oppression reached its epitome aboard merchant or military vessels; they knew, as for themselves, how to live free, according to the whim of their fantasy, and pleasures of the moment were the principle *raison d'être* of these brigands faced with permanent danger: still, a few grew rich indeed on plunder and those who avoided the gallows managed to integrate into the middle classes of the colonial world, like the famous Lafitte. But we know now³ that their rebellion had on the whole an explicitly subversive sense and a “sharing” and autonomous cohesion, announcing in their own way the utopian socialism of the 19th century and all the contemporary revolts that drove

3 Thanks to, notably, the fruitful research of the historians Christopher Hill, Peter Linebaugh, and Marcus Rediker on piracy and sailing in the 17th and 18th centuries

various projects of social justice and moral freedom. This diffuse insurrection that aimed for a transformation of social relations was incompatible with the nascent course of capitalist domination, which we know was first sketched out on the high seas by commerce and war vessels before covering the earth with factories and armies to subjugate everything, by will or by force, according to merchant logic.



In our times, piracy, which was never eradicated but has long remained confined in the archipelagoes of southeast Asia, is seeing a revival in several poorly controlled maritime zones of the planet, notably Africa. But it is what is raging off the Somali coast that has recently caused the most losses and disruption, and has kept the media's attention. Once again, myth finds its way into the story, and the journalists have sought to forge a new malevolent figure, one who menaces the well being of western consumers in upsetting petroleum and merchandise imports produced in countries with extremely low wages: the Somali pirate, like the eastern barbarian, is driven not by political or religious fanaticism but by the even more vile lure of money.

So, looking closely at what is really going on with the pirates of the Horn, at their motivations and their practices, it's actually the myth of David and Goliath that comes to mind: their cause, which is just short of being universal, comes largely out of self-defense against the voracity of the powerful, as we will see in the coming pages; there aren't very many of them and

they have little to eat; their means, particularly their weapons, are ridiculous; the highly diverse coalition of their enemies controls the world empire—more particularly the seas—and has incomparable technical mastery of naval combat.

As this aspect of things inevitably became more clear—despite the dissimulation or the lies of the military-industrial complex's parrots, and at the risk of tarnishing the glory of the brave gendarmes of the sea—the public powers and their media relays have progressively de-dramatized their discussion of the Somali pirates. For example, the long trials held in France against a few wretches caught in the act, were deserted by the journalists—and the judges haven't been so heavy-handed toward these miserable and unlucky fishermen; despite the fact that they were initially doomed to the role of enemy of the human race at the trial hearings, and at the deliberation, that of the expiatory victims.

Of course, it isn't easy to demonstrate, or to get someone to admit, that the charming character of the pirate—popular representation of transgression if there ever were one, of all times and all latitudes—could be in reality a more despicable rogue than a Cahuzac or a DSK,⁴ and a fearsome danger to civilization. So much that their level of cruelty and brutality is infinitely inferior to the torturers and billy-clubbers typical of our governments or the fascistoid hitmen in the pay of multinationals. Quite the contrary, the Somali pirates kill only very rarely and most often treat their hostages quite well. Suguli Ali, spokesperson for a band of pirates who had boarded a container ship

4 Tr—French political figures recently caught up in scandals

filled with assault vehicles, could claim in the following without being refuted: "We eat spaghetti with [our hostages]. And other delicacies too!"

Moreover, the damages attributed to the Somali pirates are after all much less significant on the scale of global trade, which constantly faces the most destructive ups and downs, born from financial disorder and speculation, from the exhaustion of resources and from commercial rivalries... The Somali pirates' exploits have for that matter constituted a windfall for the major naval armies, who have been able to test their operational capacities on them. And their growing boldness has given some states a golden pretext to reinforce their juridical arsenal and their control of strategic zones that still to some extent escaped the maintenance of international order, which is indispensable to business.



In fact, the Somali pirates are the prey who have transformed themselves into predators, benefitting from the principle faults of the market order: the ontological avidity of capitalists; their blind faith in the technological superiority of the system; their incapacity to impose their moral norms and the resigned consensus model among populations perishing from hunger and frustration. For, before the pirates, other predators—fearsome in a different way—to fill their pockets, pounced on a different, more happenstance fault of this global system whose supreme rule is profit. The breaking up of the state in Somalia attracted along its coastline whole cohorts of vultures from elsewhere, without the bothering international community: fish-

ing fleets using illicit industrial methods, mafias subcontracting the storage of toxic waste by dumping it into the ocean with impunity...

So there are a number of Somalis who show some unspeakable sympathy with regards to piracy. Here is what K'Naan, the Somali poet and rapper based in Canada, said: *"Can one be a partisan of piracy? Well, in Somalia, the answer is, it's more complicated than that... In truth, if you ask the first Somali you saw if he thinks getting rid of the pirates would first and foremost allow western ships to violate our coast as they please, sowing famine and cancer there, they'll raise the pirate flag high!"*

If the Somali pirates are driven more or less sincerely by this spirit of resistance and this will to protect their compatriots, some, notably among the silent partners⁵ of the expeditions, will not deprive themselves of profiting from their booty and flaunt their ill-gotten gains—their prestige and their prodigality will attract the toughest accomplices into their dens. And yes! surviving famine and threatened with the worst punishments by all the powers of the world, the Brethren of the Horn want to live fast, live large, and enjoy, following the example of their illustrious predecessors of the Caribbean, William Kidd and François L'Olonois.

But let there be no mistake: those who face the perils of the sea to capture vessels and crews are just

5 These silent partners are investors who have the necessary funds to finance teams of pirates and get in return the bulk of the booty. Not much is known about them, even if many rumors about them circulate: sometimes they're known local Somalis, sometimes gangsters from the Somali diaspora. None of them have ever been arrested by maritime police forces.

henchmen, to whom the division of labor and the local social hierarchy assigns the riskiest tasks. Far from accumulating treasures, most of them see but a tiny part of the ransom booty, which barely serves to alleviate, and then only for a short time, the extreme indigence of their means of existence. Shepherds without sheep, fishers without fish, it is pushed by the incessant famine afflicting this far-away land that they embrace the career of plunderer of the seas or become accomplices in the taking of hostages—as was seen during the piracy trials in which the western states showed off a few of these second fiddles, captured by their naval troops.

To those who would be tempted to reproach the Somali pirates for not having put their courage and energy in the service of installing a more just social order, one might object that, in the Somali context of war and continuous scarcity, their doubts as to the credibility of an ideal society are understandable—just as is their reticence to contribute to a new savior state, born out of the ashes of the defunct Somali administration. Like many Somalis, despite not being too familiar with Bakunin's precepts, they easily accommodated themselves to the absence of a central authority: for a long time the strict authority of the government was, in this country as in so many others, synonymous with social oppression, political repression, the abuse of power, and prevarication of all kinds.

Most of the Somali pirates are not romantic revolutionaries nor utopian combatants, nor even justice fighters à la Robin Hood: they are, quite simply, the excluded who want their piece of the pie, the poor who resist and who don't want to die so that the glob-

al middle class⁶ can waste the resources of the nourishing earth and sea with suicidal enthusiasm. Such is their awareness of the world: if not lucid, then at least denuded of illusions.

Because in the end, how can you be indignant that there are, among Somali fishermen – the despoiled, poisoned, starved, humiliated – bold people who see that they have nothing to lose and are equipped with all the reasons to defend themselves against this civilization that is trampling them? How can you not admire the audacity and the cunning that allows them to board supertankers and container ships, getting their money back from this West that has refused them its abundance and taken the bread right out of their mouths? How can you be surprised that they believe they are in the right to indiscriminately pillage the pillagers and put a little cash into circulation, subtracted from the fantastically wealthy shipowners or insurance companies, in one of the poorest countries of the world? Isn't it difficult to sympathize with the troubles they inflict on the amateur yachters (with the notable exception of those on the *Tanit*, who were genuine risk-takers) or cruise-ship tourists who are ignorant, naïve, or cynical enough to expose their affluence – under the inept notion that they are having an adventure or are on a voyage – to the “underprivileged” who lack the most basic essentials and have to fight to survive?



The present book aims to contribute, however mod-

6 Translator's note: english in the original

estly, to dissipating the haze of the media cover-up—peppered with bellicose propaganda—of what is going on on the Somali pirate front. Its authors, who aren't specialists in anything, have attended some of the hearings of two of the rather discreetly-held trials of accused pirates which were held in France; they met one of the condemned and recorded his informative account. These sporadic reports and this interview—which lifts the veil from the unjust absurdity of the legal ripost to piracy—completes and further clarifies a general exposé of the context and nature of the piracy mounting in the Indian Ocean, followed by a description of the military and juridical measures taken by major powers to combat this “plague”—and to increase, using this opportunity, their grip on the seas and their penal prerogatives.

These powers are coming up against, despite all the means put in place (and notwithstanding the undeniably successful repressive measures over the past few months), a very stubborn fact: it is just as easy and rather cheap to seize a modern merchant vessel with the aid of a dinghy and a few peashooters as it is difficult to surveil, escort, or protect *ad vitam aeternum* every ship that navigates in proximity to the coasts of the vast and numerous regions that are almost entirely peopled by victims of capitalist accumulation. Just as it is impossible for the troops of the global order to invade pirate enclaves, without getting sucked into a new quagmire—and without causing a plethora of collateral victims among a population that is already overwhelmed by all the ills and disorders engendered, under the standard of the Good, by this very same global order. Moreover, so long as nothing

is done to protect the sea itself, and notably its fisheries, the social problem will persist and worsen among the populations that survive on fishing. And the vocation of piracy will flourish—and not only in Somalia or on the Niger Delta. Anti-pirate crusade or no, so long as the sharks of business reign on the seven seas to sow death and annihilation, the small fry will show they can grow piranha teeth.

L'INSOMNIAQUE

"I'm 42 years old and I have nine children. I command boats that operate in the Gulf of Aden and the Indian Ocean.

After my years in high school, I wanted to go to university but I didn't have any money. So then I became a fisherman in Eyl, in Puntland, like my father, even though I dreamed of working for a company. This dream could never take shape because the Somali government was destroyed in 1991 and the country became unstable.

At sea, foreign fishing boats confronted us often. Some of them had no license to fish, others got one from the "authorities" of Puntland and forbade us from fishing. They destroyed our boats and forced us to flee for our lives.

I started attacking these fishing boats in 1998. I had no military training, but I wasn't afraid. On our first hit, we got a ransom of 300,000 dollars. With this money, we bought AK-47s and out boards. I don't know how many ships I've taken since. Around sixty, probably.

We prefer to attack European ships, because we get the biggest ransoms. We are friendly with the hostages, we tell them that we only want the money, that we don't want to kill them. Sometimes we eat fish, rice, and pasta with them. When the money is brought to our boat, we count the dollars and release the hostages. Then, our friends come greet us as we return to Eyl and we all go together to Garowe in Land Cruisers. There, we split up the money.

Our community more or less knows that we are pirates and that we make money illegally. But us, we consider ourselves heroes who are escaping poverty. We do not see an act of piracy as a criminal act, but as a tax, a passage duty, because we have no central government who can control our seas."

— from an interview given by an
anonymous pirate to *The Guardian* in 2009

Who Are the Predators?

Despoliation and Pollution in the Ruins of the Somali State

The Gulf of Aden is situated on one of the most important maritime routes in the world. Close to half of international hydrocarbon traffic passes through it: on average 45 container ships and supertankers (containing around 3.5 million barrels of oil) pass through it every day. Thirty French vessels take this route every month.

This is how the veritable floating safes line up right before the eyes of inhabitants of the Somali coast. Even if Somalia borders the strait of the Gulf of Aden, crossed by a highly-trafficked maritime route, it is part of what technocrats call the “forsaken outskirts” on the margins of the globalized economy.⁷ This vast territory on the Horn of Africa remains on the margins of major commercial exchange and doesn’t benefit, much to the contrary, from their effects. Despite its abundant underground resources (petroleum, uranium, bauxite...), its chaotic recent history, along with the major droughts and recurrent famines that batter the country, has devastated the economy. A third of the population is in “food crisis.” Life expectancy there is around fifty years. Today there are close to two million refugees and displaced persons, as well as a very large diaspora abroad, notably in the US, who provides residents a regular contribution estimated at 300 million dollars per year.

7 In its index of “decaying states” the NGO Fund for Peace has for four years classed Somalia as the most devastated country on the planet—considerably worse, for example, than Afghanistan or Iraq.

In the interior of the country, the Somali population is made up largely of semi-nomadic herders, whose resources come primarily from the raising of camels, goats, cows, and sheep. The scarcity of water today brings increasing numbers of nomadic herds to become sedentary. In coastal villages a commercial bourgeoisie struggles to subsist. The maritime frontage, over eighteen hundred miles long, is populated by modest fishermen.

Somalia was under colonial rule until 1960—the English in the north and the Italians in the south. The authoritarian regime of General Mohamed Siad Barre—in power since 1969 through the grace of a putsch—crumbled in 1991, after two years of insurrections set off by the bloody repression of a riot during a soccer match. At that point, the country entered a period of chaos with a backdrop of civil war, during which different factions, from opportunist clans to radical Islamist groups, tore one another apart fighting for power, causing the deaths of hundreds of thousands of people—victims of combat and famine—and the evaporation of the Somali state.

In 1992, the charlatan of humanitarian intervention Bernard Kouchner, then French minister of Health, landed, bright and bushy-tailed, with the media watching, in a bloody and starving Somalia, with his famous bag of rice on his shoulder. The message of this docudrama—it would be better to meagerly soothe the poverty in these hells than to see it invade the snug paradises of the European middle class—is a false naïveté so ignominious that it provoked more jeers than applause in the western public. That same year the American government, who before had sup-

ported the regime of Siad Barre for highly strategic reasons, launched the operation Restore Hope: the Pentagon dispatched some over-equipped troops to restore not hope but the state and the stability of the markets for the petroleum supply to European economies. This expedition, covered in the media as filled with good intentions, was crowned by a stinging failure in October 1993, at the famous Battle of Mogadishu – capital of the ex-Somali state and enormous trap for the American expedition, which left promptly, its tail between its legs, swearing never to come back.

Throughout the 90s, Somali warlords, disconnected from the traditional clan organization, prospered and gained strength, notably in Mogadishu, thanks to the appropriation of aid from humanitarian organizations. The blue helmets dispatched by the UN in 1992 to protect the distribution of humanitarian aid left in 1995. Following this, neighboring African countries, notably Ethiopia and Kenya, profited from the Somali state's insolvency and the incapacity of the international community, by conducting, with more or less success, multiple military incursions. They made these interventions under the pretext of combating, as subcontractors of the powerless West, the Islamist hydra and clan barbarism, but their real aim was to assert themselves as regional powers.

It wasn't until 2004, when the country had been thoroughly broken up between north and south in different more or less civilized bodies, when the Transitional Federal Government was created and charged with working towards a reunification of the country and the restoration of the state. Coming from factions supported by western powers and by the Organization of African States, who are the predators?

tion of African Unity (OAU), it was based at first in Kenya, exercising no control in the country outside of a few neighborhoods in Mogadishu.

In 2006, an Islamist organization, the Islamic Courts Union, whose armed branch calls itself Al-Shebab (the Youth), came to power in the south of the country, an area constantly beset by clan wars, and managed to bring the semblance of order to Mogadishu. At the end of this same year, the Ethiopian army intervened and provoked the retreat of the shebab, who fled Mogadishu. The Ethiopian invasion allowed the TFG to declare itself the de facto government, controlling most of the retaken South, relying on a multinational force put there by the OAU and the Africa Mission Union in Somalia (AMISOM).

Today, the territory is made up of a multitude of zones of power, with three principle regions. The complexity of this mosaic (shifting to the point that it is nearly impossible to map) is only equaled by that of the political, religious, inter-clan conflicts that take place there:

In Mogadishu, a new Somali president came into office in September 2012, following a long line of provisional governments since 1991. The government of the new strong man, Hassan Sheikh Mohamoud, is loyal to western interests and his survival depends on the international institutions who prop him up, but his authority barely extends beyond the borders of the capital. He keeps himself in power thanks to AMISON, a force of 18,000 soldiers (coming from Kenya, Burundi, Djibouti, Nigeria, Sierra Leone, and Uganda) and is financed by the UN. In the rest of the south, the Gedo region is still in the hands of al shebab; and the Kenyan troops, autonomous in the heart

of AMISOM, occupy the Kismayo zone.

The “semi-autonomous” entity of Puntland, whose official objective is to integrate into the hypothetical federal state, is situated at the tip of the Horn, in the northeast of Somalia. It makes up a third of the Somali population of the country. This territory is almost entirely peopled by members of the Majeerteen sub-clan, a branch of the Harti clan, which itself is part of the Darod confederation (one of the four largest Somali clan confederations). It is also the region where piracy thrives the most, even if this phenomenon currently takes place across the Somali coast, notably more in the south, from Harardhere to Kismayo.

The secessionist state of Somaliland, situated in the northwest – at the site of the old British colony – declared its independence in 1991 after the Siad Barre’s planes bombed the region, causing 50,000 deaths among the local population. The local government, not recognized by the international community, is allied with Ethiopia and is in sporadic conflict with Puntland.

The entire Somali coast functions as a large untaxed zone through which all sorts of merchandise passes, notably in the ports where informal and contraband economies are the norm. It’s along this coast, close to the maritime routes of global trade, that the piracy phenomenon has reached its full magnitude.



In the 1980s, the regime of Siad Barre agreed to let parts of the coast serve as a dumping grounds for toxic waste, coming principally from Europe and generally passing through Italy. In the 1980s this very specific
who are the predators?

In 1994, Ilaria Alpi and Miran Hrovatin were assassinated in Mogadishu while researching (for the Radio televisione italiana S.p.A.), the international trafficking of toxic waste barrels. In Bosaso, the two journalists were able to film the dumping of metallic barrels by men dressed in protective suits. Their study sought to demonstrate that Somalia is used as a dump by the industries of rich countries that abandon there their toxic waste and other materials they want to get rid of. Italy, through the intermediary 'Ndrangheta (the Calabrian mafia), but also other countries and political and business figures are implicated in this mafia traffic. When the information was to be sent to their newsroom, Ilaria and Miran were killed.

Francesco Fonti, a reformed mafioso who worked in this waste commerce network has stated on the subject: "I've personally brought radioactive waste to the Horn of Africa. When we arrived at the port of Bosaso, the Italian military [then present in Somalia among the forces sent by the UN] looked the other way. I'm convinced that Ilaria Alpi was killed because she saw things she shouldn't have seen."

A parliamentary investigatory commission on the death of the two journalists, opened in Italy but has been marred by various irregularities and cover-ups, concluded with a straight face that it was a chance killing that happened during an attempted robbery.

traffic brought close to 300 million tons annually, the cost of "treatment" being one hundred times less than in Europe (one ton dumped into the ocean brings in \$2.50 while storage in Europe costs \$250/ton according to the OECD).

In fact, a short time after the tsunami ravaged

Gianpaolo Sebri, another ex-trafficker of waste who has collaborated for several years with Italian magistrates, declared during his hearing: "I don't know how much waste has been sent to Somalia. Somalia has become a new trash can, but also a destination for many arms shipments. I know that this 'business' could happen thanks to the participation of mafia groups who assured protection [of waste convoys]."

Another ex-dumper, Guido Garelli, stated that in his opinion: "Ilaria Alpi touched on the most jealously-guarded secret kept in Somalia: waste dumping, paid with money and arms for no fewer than twenty years. The organization of all this is the privilege of intelligence services who are involved in what is probably the most liquid company at present. I'm not only speaking of the SISMI (the Italian military's intelligence services) and the SISDE (another Italian intelligence service). There are also similar organizations in other countries, that've resorted to several African states to get rid of their junk." During an investigation that began with the confession of a member of the 'Ndrangheta admitting to sinking boats loaded with toxic waste in the Mediterranean, Guido Garelli revealed another project that he started: Urano. The first project planned to bury the waste in a natural crater situated in the western Sahara. It was in the Horn of Africa that this project was finally realized, under the code name Urano II.

the coast of Thailand in 2004,⁸ the inhabitants of the Somali coast noted that dozens of barrels had washed up all along the shore. This natural disaster revealed that

8 Puntland suffered serious damage, notably in the fisheries, but the international community completely ignored this region and the other African countries affected by the catastrophe.

who are the predators?

the territorial waters of Somalia sheltered a huge dump containing some of the most harmful toxic waste. This subject had been taken up back in 1994, when Ilaria Alpi, an Italian journalist, and her cameraman Miran Hrovatin were assassinated in Somalia while investigating the toxic waste dumping networks.

Paul Moreira's reporting in *Toxic Somalia, l'autre piraterie* (2011) shows the devastating health effects that these disposal sites have had among the population, and between the lines, evokes the question of piracy.⁹ Somalis reacted to the pollution on their coasts by attacking boats that dumped barrels of waste in their waters. These defensive reactions were, in the 90s, considered acts of piracy by international authorities and the media, who shut their eyes, each and every one, on one of the gravest and most crooked instances of criminal pollution.

"The ransom we are asking for is our response to the toxic waste they have continually been dumping off the coast of our country for close to twenty years. The Somali coast has been destroyed and we think that this money is nothing compared to the devastation that we have seen on our seas," declared Jamna Ali Jama in October 2008, one of the spokespersons for the operation against the Faina.¹⁰



If the toxic dumping sites in Somalia are not unknown to any state in the world, the pillage of fisheries are just as notorious. Beginning in the 1990s, Somali waters were pillaged by Asian and European fishing fleets,

9 See Paul Moreira's testimony in the Ponant trial on pp. 86-92.

10 Hérodote. "Pillages et pirateries." n° 134, 2009.

who were quick to exploit the internal disorder ruling the country. They practice what is called, in international legal texts, IUUF (Illegal, Undeclared, Unregulated Fishing), an unremitting and uncontrolled practice. The fishing fleets, having emptied European waters, now contribute, and have been doing so for many years, to impoverishing one of the poorest regions of the world. The profits gained by IUUF add up to millions of Euros. The tuna fishery is experiencing vertiginous growth, and France and Spain share the market.

In an interview with journalist Jay Banahadur in his 2011 study *The Pirates of Somalia* (2011), a pirate claims that before the ships came from all corners of the globe, the principle resource for fishermen of this region was lobster. Modern trawlers practice a style of fishing that is on an immeasurably superior scale to that of local fishermen. The fishing techniques of western capitalist countries have been industrialized. Their large-catch trawlers use, along the coast of Somalia, methods that have been banned in other regions of the planet: they drag gigantic nets, which rake up everything in their path, including lobster. The marine ecosystems are exploited to their last limits in order to maximize profits. Little by little, the sea's regenerative capacity is destroyed.

Osman M.F., a Somali pirate arrested in January 2009 in the middle of the Indian Ocean with four other unfortunate friends, then transferred and imprisoned in the Netherlands, stated during his trial: *"I am a fisherman... Well, not anymore. The sea is empty. I know that [piracy] is criminal, but when you are hungry, with no work, and when there has been a war in the country*

for a very long time – then you will take a risk.”¹¹

Since 1995, reports and petitions elaborating these damages and spoliations fill the trash cans and archives of the UN. The Food and Agriculture Organization (FAO) has estimated that more than eight hundred foreign trawlers came to Somali waters in 2005. Piracy along this coast reveals the consequences of globalization on the environment. The pirates, many of whom were once fishermen, denounce the competition of numerous foreign trawlers who come to illegally operate in Somalia’s territorial waters. *“Those who kidnap are 100% fishermen. They once had nets, ships, and even freezers, which are all now useless, because the big foreign boats have come to fish in our home, in our territorial waters. They take all the fish,”* a captured pirate stated in 2009.¹²

In the beginning they attacked large trawling fleets, so the pirates think of themselves as the “coast guard” of their country, defining their activities as self defense. Somali society considers them justice fighters of the seas.

“We want to stop illegal fishing and the waste dumping in our waters. We do not consider ourselves sea bandits. We think that the sea bandits are those who fish illegally and use our waters as a dump, throwing out their waste and coming armed to navigate our coastline,” claimed a member of the “Volunteer of the Coast Guard of Somalia.”¹³

11 “Osman M.F., pêcheur somalien devenu pirate ‘parce que la mer est vide’,” *Le Monde* 20 mai 2009. (Tr—the title of this article translates to: “Osman M.F., somali fisherman becomes a pirate ‘because the sea is empty’.”)

12 Hérodote, op. cit.

13 Hérodote, op. cit.

This denomination, incidentally, is frequently used in Somalia to designate what are called, in the rest of the world, "pirates."

To this intensive and destructive fishing, add the frequent ship de-gassings through the Gulf of Aden and the various pollutions of all those who consider the sea as a dump site. The fish and crustacean resources have been so exhausted that the remaining thirty thousand Somali fishermen, who are already very poor, find themselves threatened with extinction.

In the 90s, the people along the coasts of the the Gulf of Aden publicly denounced these massive illegal fisheries, which deprive them of their means of subsistence. Tension mounted around Abdullah Yusuf Ahmed, then president of Puntland. In order to ease the fears of good people, or rather to make like he was regulating the catastrophe, some private British companies recommended that the president legalize these pillages by distributing "patent letters" (fishing licenses) to foreign fishing vessels. In exchange, these companies agreed to ensure "security of the waters," in forming and employing what was then called the coast guard—an official one, though it would come from the private sector. Hired to escort fishing vessels and prevent any pirate attack, the majority of these ocean guards came from the Somali hinterlands. It didn't take them long to realize the sham regulation imposed by president Yusuf Ahmed and his speculator acolytes and turn against their employers, pillaging the ships they were employed to protect.

When they express themselves—often during trials—many of the Somali sailors of fortune refute the label "pirates," and prefer, as we've seen, to who are the predators?

define themselves as “coastguards.” Thus this term has taken on a whole new meaning: it has effectively “switched sides.”¹⁴ Initially reserved for mercenaries contracted to defend the foreign fishing boats, it was then claimed by the pirates themselves, with their aim to protect their coastline from legal or illegal pillage that the industrial fishermen imprudently practiced. Out-plunder the plunderers. To the corrupt coast guards, buccaneer coast guards.



So Somali piracy appears at once to be the resistance to injustice and a lucrative solution to the problems of survival in a country impoverished by decades of mafia-like governance and civil war.

What place exactly does piracy have in Somali society? First of all it is a rather marginal phenomenon: there are an estimated five thousand people associated with this activity out of the 10 million Somali inhabitants. Moreover it is a seasonal activity since in the dry season, during six or seven months of the year, it is impossible to get far from the coastline because of storms.

The term “pirate” translates in Somalian to *burcad badeed*, which literally signifies “thief of the seas.” The definition of piracy in Somalia is similar to that used in Europe since antiquity: “To seize the goods of others by force while at sea.” In Somalia, the *burcad badeed* are recurrent figures in ancient oral poetry, for

14 Tr—The original, *changé de bord*, resonates on a number of levels with sailing-related terms; which all have to do with altering one’s position in some form or another whether in relation to land, one’s crew, or the ship itself.

JG: Have the pirates been misunderstood?

AS: We do not consider ourselves pirates. The true pirates are those who fish illegally in our sea, throw their trash in our sea, bring weapons to our sea. We are simply protecting our waters. We should rather be seen as the coast guard.

JG: Why did you become a pirate?

AS: [ignoring the insistent use of the term “pirate”] We are protecting our sea. It’s a completely normal thing that anyone would do for their country.

JG: Do you not think that what you are doing is criminal? Holding people hostage at gunpoint?

AS: If you hold innocent people hostage, it’s a crime. If you hold people who are taking part in illegal activities, like dumping waste or fishing, it is not a crime.

JG: What is the name of your group?

AS: We are the Central Region Coast Guards.

— from an interview with Ali Sugule, presented
as a Somali pirate, with Jeffrey Gettleman
for *The New York Times* (30 September 2008)

a long time the principal mode of transmission of historical memory. The old poets only rarely held moral judgements against these adventurers, singing rather of the acts of vengeance and courage that they carried out—and these connotations have reappeared since the crumbling of the Somali state.

The Somali territory, and the Land of Punt (or
who are the predators?

Puntland) in particular have this type of multisecular tradition of pirate lore. They take part however, in our times, in a new specialization, tied to the meeting of experienced sailors who have been reduced to inactivity, and young nomads finding no work in the hinterlands. The population of Puntland, a principle region when it comes to piracy, is broadly made up of two types of inhabitants with different ways of life. Those of the eastern coast are sedentary; the inhabitants there live by trade or fishing and identify with Islamic codes, which govern most aspects of life in the town or village. Nomads live in the interior and subsist predominantly on the raising and selling of camels, exported for the most part abroad.¹⁵ Their culture is more warlike than that of the coastal populations, and they have stayed more faithful to customary, pre-Islamic ancestral laws.

At the beginning of the 90s, a wave of this less-domesticated nomadic population migrated towards the coast and joined forces with the fishermen, proletarians of the sea. Behind the first documented acts of piracy is this circumstantial alliance between the population of the hinterlands, who were familiar with weapons; the inhabitants of the coast—made up of modest fishermen—and a rich elite of merchants. Yet the latter found themselves downgraded by the men of war who, in the interior, exercised the political and police power of the state of Puntland, like the current president, Abdi-rahman Mohamud Farole. A limited

15 At the beginning of the 1990s, there was a sudden stop in the export of animals due to the competition from countries like Australia, notably in the markets of the arab world, who are voracious consumers of sheep.

and fragile Puntlandian consensus is thusly maintained at the heart of the Majerteen clan.¹⁶

For the young or the less than young inhabitants of the coast as well as the interior, neither of which benefit in any way from this consensus, there are only two options left: attack the convoys of humanitarian aid to make a few bucks, or die of starvation. The pirates who've been interrogated testify to serious poverty and desperate situations.

"When you don't have the means to study, and are out of work, you can be tempted to join the pirates, because it's easy money," explains Awil, an information technology student at the university of Garowe, capital of Puntland. "My father pays for my studies, but some of my friends have become pirates."¹⁷ It should be made clear here that 3.5% of the budget of the "semi-autonomous" government are dedicated to education – in other words half the amount dedicated to security spending. The fight against piracy constitutes, for the authorities of Puntland, a basis for commerce, and allows them to obtain international financing officially destined to education and public health,

16 "Political shifts follow unwritten laws that are founded on a relationship of military force. Since 1998, the three successive governments of Puntland have come from each of the three nomadic Majerteen sub-clans, called the 'Mohamud Salebaan' (common mythic ancestor), which are the Omar-Mohamud, the Osman-Mohamud and the Issé-Mohamud. These three groups aim to establish an aristocracy or, more precisely, a caste to whom the right of direction of public affairs of the Majerteen, the Harti, and even all of the Darood, would return." (From the *Situation sécuritaire et stabilité de Puntland*, a report published at the end of 2009 by the Délégation aux affaires stratégiques du ministère de la Défense français). Membership in this caste is a condition to claiming the supreme magistrate of Puntland.

17 See the article by Marie Wolfrom in *La Croix*, May 2012.

which the local leaders are experts in diverting.

It should be added that the majority of pirates do not embrace this highly perilous career until they have no other choice. At last count there were two to three hundred of these sailors of fortune who did not return from their expeditions, taken by the ocean when they ran out of fuel, or succumbing to all manner of other maritime hazards—or taken down by the bullets of various gendarmes of the sea. In 2009, two pirates went to prison explaining that between earning a dollar per day as they did to guard a market or a parking lot and pocketing several hundred euros in the event of hijacking, the choice was easy.¹⁸ Whole villages provide a lot of support to pirates,¹⁹ something completely logical since the villagers often directly benefit from the ransoms extorted by the pirates,²⁰ notably in supplying the pirates and their hostages during negotiation periods.

The clan structure in Somalia plays a weak role in piracy activities. Since the 1990s, sociologists and ethnologists have called into question the “clan paradigm” in favor of a “class paradigm” to better describe the society or societies of the Somali nation. Young pirates, made rich by their plunder, now contest the authority of the elders and the prevalence of the old

18 See the documentary *La Piraterie en Somalie, un investissement rentable* (2011) on Dailymotion.

19 See “Liesse dans le village côtier de Harardhere suite au paiement par l’Espagne d’une rançon de 2,7 millions d’euros en échange de la libération des marins du thonier espagnol Alakrana” (lefigaro.fr).

20 During the preliminary investigation of the case of the hostage-taking of the Ponant, one of the accused pirates claimed that of the ransom, \$10,000 would go to the villagers who provided logistical support, and \$50 to each family in the village.

dogmas. Some of the elders oppose the pirates and denounce the harmful effects of piracy (alcohol, prostitution...), which are contrary to the precepts of Islam and traditional family morals. Others prefer to join forces with the pirates, to benefit from their gains or because they approve of their mode of resistance.

Moreover, and more particularly in Puntland, the pirates destabilize local authorities by placing them in a dilemma: either they support piracy at the risk of compromising themselves in the eyes of all the world powers, or they oppose them and thereby deprive themselves of the resources that are as easy to acquire as they are necessary. The two attitudes are not always incompatible. Two of the principle and oldest somewhat-structured pirate networks belong to one of the Majerteen sub-clans, the Issé-Mohamud. The current president of Puntland, Abdirahman Mohamud Farole, belongs to the same subclan. He is a businessman who has for a long time been living abroad. Even though these networks aided his ascent to power, he has become an apologist for anti-piracy in order to attract the capital of foreign investors and international aid.²¹

As for the Islamist combatants, the other evil characters in the eyes of the West, the pirates haven't made any political alliance with them. The Islamist tribunals didn't really exert power until 2006 in Mogadishu (and more sporadically in other regions of the South, far from the coast); they even claim intentions to combat piracy and its attendant impieties. Their condemnation of piracy (decreed *haram*, contrary to the precepts of Islam) is mostly ideological posturing since they hardly have any influence on coastal populations.

²¹ Situation sécuritaire et stabilité du Puntland, op. cit.

However, they have sometimes been moved to action, notably after the pirates dared to capture the *Sirius Star* in 2008, a Saudi oil tanker carrying two million barrels. The Saudi petro-feudal regime being one of the principal funders of the Islamic tribunals, the shebab had to make like they were doing something about it and invaded the Port of Haradhere, one of the notorious pirate bases, 600 kilometers north of the capital, in May of 2010. [They did this] “to eradicate piracy and declare Sharia [...] responding to the call of the population.” But they turned back pretty quickly, and the pirates returned. In March 2009, another Islamist militia had gathered *manu militari* several hundred youth of the region into the Bosaso Stadium, Puntland’s main port city, to make them swear on the Koran to never take part in piracy, not without putting ten or fifteen dollars in each of their pickets – some useful dough but hardly more dissuasive than an oath given under constraint. Mohamed Saïd, spokesperson for the pirates who hijacked *Sirius Star*, replied to them in advance, with a haughtiness worthy of the buccaneers of the golden age of piracy: “We are the shebab of the sea and we are not afraid of the shebab of the land.”



The *modus operandi* of piracy acts – committed along the Somali coastline aiming to seize ships on the high seas – has been perfected over the years, with the use of GPS to navigate and an Automatic Identification System (AIS) to better choose their prey and its pursuit. As for the boarding, that remains traditional and is carried out with the use of grapplers, apparently

making use of all sorts of weapons for dissuasion or intimidation. The duration of the attack is often very short. When meteorological conditions are favorable, the average time between the spotting of the pirate ships and the boarding, is ten minutes.

The favorable conditions for these seizures are abundant circulation of resources by way of sea, a faltering security of the maritime routes, and the audacity of men with their backs against the wall, ready to seek adventure with a few light weapons—easy to procure in a country at war. Profit-seeking on the part of ship owners has lead to the reduction of crew size on the merchant vessels, which has made them more vulnerable. The increasing tonnages have slowed navigation. Flags of convenience, the tax havens, and cheap labor have moreover added to the opacity of commercial navigation. Along the Somali coast, the International Maritime Bureau (IMB) documented, for the year 2011, two hundred thirty-seven attacks, eighteen more than in 2010. In the first trimester of 2012 (still according to IMB), there were nearly eight hundred sailors held hostage by Somali pirates waiting for the payment of ransom, often for months at a time, and for the most part aboard their hijacked vessels.

The cargo does not constitute the determining factor in the choice of whether to attack a ship. The majority of attacks involve bulk merchandise, involving cargo neither easily unpacked nor easily sold. Even in the case of the *Faina*, which was transporting weapons headed for the Sudan, pillage of the cargo was extremely limited. Since theft of the cargo is not a primary motivation, the threat that piracy presumably poses to global commodity flow—symbolized by the who are the predators?

containers²²— is not supported by the evidence. What interests the pirates are the ships and their crews, who they will exchange for ransom. So the captives must stay alive and be treated properly—and, in general, they are. There are, for that matter, written conduct charters, codes of ethics of sorts for pirates, vis-à-vis the prisoners.²³ The latter are to be liberated along with their vessel as soon as the payment of the required sum is complete. These codes of conduct are nevertheless less and less applied to the letter, as a result of the brutality now used by the navies of certain countries. For example, in May 2010, The Russian navy got a lot of bad press after they abandoned ten pirates (captured during an assault to liberate an oil tanker) on a small craft in the middle of the ocean 550 kilometers from the closest shore, without provisions or navigation equipment. The pirates died before having reached the coast.²⁴ You might suspect this version of the story however, offered by the Russian navy and already not so convincing, to be hiding the fact that the

22 See the very instructive *Soudain, un inconnu vous offre un conteneur, transport maritime et production mondiale*, Descahiers, novembre 2012.

23 Excerpt from a pirate rule cited by commander Marchesseau, following the taking of hostages on the Ponant: “1) Taking merchandise. Eating the crew’s food or using the hostages’ toilets: 500 dollar ticket. 2) Mistreat a sailor, a passenger: 2,000 dollars. 3) 100 dollars for being late for duty, 500 dollars for firing without reason or refusing to obey. 4) 1,000 dollars for falling asleep during guard duty. 5) Immediate exclusion for anyone who dares to critique the organization.” To this code of good conduct is also added the prohibition against taking the hostages’ wallets (2,500 dollar-ticket taken from the pirate’s portion of the ransom) as well as the forbidding of sexual aggression against women.

24 *Le Figaro* (11 May 2010)

pirates had been massacred straightaway, at the moment of their capture. On various internet sites there are propaganda videos in which Russian soldiers are setting fire to boats with pirates aboard.²⁵

The amount of ransom money is not insignificant: on average we're talking 5 million dollars per detained boat. This booty is, more often than not, shared as follows: 50% to the pirates (with a pay-scale ranging from to the first one who boards the ship during an assault to the cook or the prison guard down to someone who knows a little accounting or who has a dinghy), 20% to the investors, 25% to intermediaries (translators, suppliers) and 5% to the families of dead or arrested pirates.

The discrepancy between the boats they use and those they take speaks volumes about the pirates' boldness. On one side little motor boats, quick but still very modest, and on the other, sail boats (Ponant, Carré d'As), trawlers, heavy freighters, luxury liners, bulk carriers, all the way up to the Saudi supertanker Sirius Star which was captured in November 2008 (six months after its launch) with 320,000 cubic meters of crude on board, and returned the following January in exchange for a ransom of 3 million dollars.

Since the end of 2008, piracy seems to be distancing itself from the coast of Puntland, its initial territory. With the reinforcement of the military presence in the zone, they are seeing a geographical double movement, from the far eastern Somali coast, closest to the Gulf of Aden—more important in terms of volume of traffic—and toward the south of the country

²⁵ See the website fortunes-des-mer.com.

to the Seychelles sea, because of the potential of the numerous tourist ships that cross it. From here, the pirates' activity is happening further and further away, as far as six hundred nautical miles from the coast, thanks to "motherships" or relay boats, which more often than not are dhows (traditional ships of the region), or captured trawlers, carrying faster skiffs that carry out the operations. In 1998, the first pirate fishermen attacked tuna boats so they could use them as motherships. These relay boats allowed the pirates to operate much farther from the Somali coastline. The attack zone forms an expanding triangle, going from Yemen and Oman to the Seychelles and Tanzania, even Mozambique (See the map on page 45).

To protect themselves from acts of piracy, very early on shipowners considered circumventing risk zones, for example by rerouting ships headed for Europe via the Cape, thus avoiding passage through the Suez Canal and its "risky" shores. The experiment, tested in particular by Maersk, a leading maritime transport company, was not conclusive and failed to challenge the lasting nature of the East-West route, which is much less costly. Even the most threatened ships – the slowest or lowest – continue to use the most direct maritime corridor. In any case, the expansion of Somali piracy into the Indian Ocean has demonstrated that recourse to other maritime routes is neither an economically nor strategically sustainable solution.

In their choice of prey, the Somali pirates do not target any particular nation. All states of the planet have declared war on them and offer assistance in hunting them down, making this one of the many asymmetrical conflicts, of more or less low intensity,

that sporadically cast a pall over or slowly consumes still-disputed regions of the globe. Decried to be enemies of all, the Somali pirates do not themselves have a fight with anyone in particular.



According to Institut supérieur d'économie maritime Nantes Saint-Nazaire (ISEMAR), the statistics tracking traffic through the Suez Canal show that it is difficult to evaluate the impact of piracy on Europe-bound maritime transport, notably because of the economic recession the Old World has been experiencing since 2009, which drastically reduced market exchange there. We can note however that the years of growth and structuring of Somali piracy between 2003 and 2009 coincided with an increase of traffic through the Suez Canal. This leaves one thinking that, if piracy disrupts maritime commerce in the region, it wasn't nearly enough to threaten ship owners. Neither the threat it represents nor the damages it causes are significant enough in themselves to limit maritime traffic on routes that are within the pirates' reach. The increase of commodities prices at resale allows companies to absorb the insurance surcharges, which altogether reached an increase of around 1%.

When the pirates target cruise ships transporting vacationers having a merry trip to the Seychelles or Maurice Island, the media and government benefit from this outrage committed against so-called innocent tourists, to justify and boast about military antipiracy operations in the Indian Ocean. Moreover, indignation reached its height in who are the predators?

the West when the Somali buccaneers attacked a ship loaded with foodstuffs from the World Food Program (WFP), destined for people suffering famine in their own country. This propaganda fails to point out that in going further out to attack ever larger and more diverse ships, the wretched of the sea are only trying to escape the general slaughter – and their own death.

Since taking crews hostage for ransom is the primary objective of the pirates, crews at sea have to follow more and more rigorous vigilance orders to protect themselves. International directives on “the prevention and repression of acts of piracy” create an additional workload for sailors. A guard post on the moorings, more frequent rounds, or the highly demanding communications and watch procedures constitute so many additional tasks for the crew, in a context of shrinking crews – which are often reduced to the absolute minimum, as the race for profit and global competition demand.



The sales indirectly resulting from piracy far exceed the mere plunderings by the pirates. In 2008 the British institute Chatham House estimated the cumulative ransoms added up to 16 to 30 million dollars, while 16 billion dollars have already been spent making war on the pirates, financing preventative protection of vessels, and covering the surcharges resulting from the buccaneer threat, notably in insurance and fuel fees. In this way, piracy has brought about a market linked to maritime transport, the economy of anti-piracy. And the real revenues of the pirates appear

quite pathetic compared to the profits generated by the fruitful business of this type of sea predator.

The list of these profiteers is long and diverse. The state of Puntland discreetly set up a private army of more than a thousand men to “combat the pirates,” allowing it to strengthen its authority since 2009. This force has created so much talk that it could easily constitute a textbook case for governments seeking to privatize part of state military missions in this way. On November 19th, 2010, a press release from the government of Puntland announced a “partnership” with a British security firm, the Sarecen Company, employing mercenaries who for the most part come from South Africa and are under contract with the United Arab Emirates (UAE), who are generous funders of the operation and Allah’s major exporters of hydrocarbons. Sarecen was entrusted with training a force of marines to combat piracy and illegal fishing along the coast of Puntland. The extremely despotic governors of the UAE complacently justify this investment by aiming to place themselves at the front lines in the fight against piracy – even if it means financing, with abundant secret funds, back-room firms like Sterling Corporate Services, a shell company based in Dubai that serves as intermediary, in the greatest obscurity, between the mercenaries of Saracen and the greedy masters of Puntland.

Several american officials have publicly stated that they approve of the creation of this sort of private army. The Pentagon itself has set the example in its wars of the East, from Bagdad to Kabul, by subcontracting numerous military tasks to US security companies, whose blunders and impunity have been widely discussed. The Intelligence Service of Puntland who are the predators?

land, which answers directly to president Abdirahman Farole, has been trained by the CIA for more than ten years. An article in the *Washington Post* that appeared in December 2012 mentioned a training camp for this army in the north of Puntland, more than two hundred kilometers away from the “pirate coast”, but very close to mineral riches—oil, gas, and rare earth metals—that they hope to mine and that needs protection from sabotage and greed.²⁶

So in 2010, with the approbation of the Somalia’s Transitional Federal Government, the Puntland Maritime Police Force (PMPF) was created, a professional maritime force to repress piracy and other illegal maritime activities along the Somali coast. With the aid of Sarecen, the PMPF followed the model of the pirates’ mother-ships, by bringing in hotel boats as autonomous police islands. The problem, in the end, is that as soon as the private anti-pirate army lose their emirate sponsors, hundreds of well-armed mercenaries, moved by the lure of money, will be left on their own, in camps lost in the middle of the desert, or at sea in the middle of nowhere. Then the risk will be that they end up joining the ranks of the highest bidder.²⁷

France didn’t want to be outdone: during the visit to Paris of Somali president Abdulahi Yousouf in May 2008, a company of mercenaries then close to

26 An obvious connection between the government and certain Puntland businessmen, namely arms importers, is identified in the UN report on the non-respect of the embargo placed on Somalia. The latter are themselves in business with Canadian and Australian companies active in oil exploration.

27 See the article “Private army leaves troubled legacy in Somalia” by Mark Mazzetti and Eric Schmitt from October 4th, 2012 in *The New York Times*.

the Élysée, the very shadowy Secopex, signed a contract concerning “the development of the presidential guard as well as the security of Somali waters.” The accord concerned the creation of a coast guard unit, reinforcement of maritime affairs, customs, and maritime police, as well as the creation of a coastal intelligence unit. “This unit will be able to, in time, identify potential actors and apprehend them with the aid of intelligence,” explained Pierre Marziali,²⁸ CEO of Secopex.

The magazine *Mer et Marine* tried to be more reassuring: “It’s not a question, of course, of playing Zorro and shooting at anything that moves, starting with a fisherman who inadvertently gets too close to protected cargo. Founded in 2003 by its current president, a military veteran who served in elite parachutist units in the French army, Secopex looks more than anything like a company of professionals. They also have academics who specialize in criminology as well as ex-combat swimmers from the navy, with most of the workforce made up of ex-personnel from the ministries of Defense or the Interior.”

It is unlikely that these old secret agents broke all ties with French services... Despite the signature of this accord, this private military assistance project in Somalia did not succeed due to lack of financing according to Secopex, as Somali pseudo-State was unable to draw the necessary subsidies from international organizations or from firms with a stake in the situation.



Other profiteers of Somali piracy: insurance compa-

28 Killed under circumstances that were more than suspicious (like himself) in May 2011, in Libya
who are the predators?

nies, whose premiums have quadrupled for ships transiting through this region, now classified a war zone. For that matter, as revealed by an investigator looking into the maritime insurance, less scrupulous ship owners cheat without compunction, as some contracts are imprecise enough to allow them to double-declare a claim under different clauses.

Then there are the intermediaries – notably the law firms – in the negotiations between pirates and ship owners. For example, British law firms involved in early negotiations, needing local Somali contacts, contributed to overstating the importance of the Somali diaspora as piracy's backyard.

Shipyards also make a profit from the fear of piracy by proposing security options that have little practical use, like the “donjon,” a secure refuge usually situated at the rear of the gangway and equipped with enough provisions to last for a while. This shelter is supposed to allow the crew to escape possible exchanges of gunfire during a boarding attempt and, eventually, to wait for the arrival of help without falling into the hands of the plunderers.

Military navies from several countries gain a strategic advantage by occupying the oceans, as we will see in the next chapter. In some cases, to make ends meet they privately contract their services to shipowners. Completely private security companies prosper on the market of paranoia that the Somali pirates have aroused: some cruise ship companies have recruited mercenaries, preferring Israelis because of their *savoir-faire*, as was revealed in the MSC Melody cruise ship affair. One could also cite the French, such

as the veterans from the GIGN and the DGSE²⁹ who head Gallice Security. This private military company offers a choice of either an escort ship, under a Panamanian flag of convenience—the Libecciu, an old French customs patrol boat—or “onboard protection teams.” It bases its legitimacy on the fact that “the international community has strengthened the juridical scope that deals with the use of force and the fight against Somali piracy (the Montego Bay convention and resolutions adopted in 2008 by the Security Council).³⁰

One of its associates³¹ was at least clear when he said: “*Out of respect for the client, Gallice only offers lethal solutions, believing that non-lethal solutions are but plain and simple deception...*” or, he adds, concerning the reticence of French politicians: “*Given the slip-ups of certain private companies, notably in Iraq, I can understand these hesitations, but do we have to leave exclusivity of a market estimated to be worth hundreds of millions of Euros to the Anglo-Saxons?*”

There are also so-called non-lethal arms manufacturers offering a multitude of anti-pirate tools—in

29 Tr—The Groupe d'intervention de la gendarmerie nationale (GIGN) is similar to SWAT in the United States; the Direction générale de la sécurité extérieure (DGSE) to the CIA

30 But as a former marine commando who had worked for Gallice underlined: “The question of arms is also complex between the acquisition, detention, transport and utilization. The only constant factor that comes out of it is that, in international waters, the juridical question is totally unclear and this situation is nowhere near being settled. The international decrees and conventions do not take states or their ships appointed to a public service mission into account. Concerning the right to individual defense, the only law in effect is that of legitimate defense.” (Marine n° 231 April-May-June 2011)

31 Interviewed in the September 2011 issue of the journal *Marine et océans*





this domain, they exhibit a boundless imagination: water canons, fake nets, and dummies; electrified overboard railings with 9000-volt foldable fence accompanied by a powerful siren and lit with automatically lighting projectors; surveillance devices, like an infrared radar permitting the detection of heat sources to detect the approach of boats in poor visibility; on-board listening systems with microphones that allow shipowners and military forces to listen to everything; sound canons that resemble parabolic dishes that emit a deafening sound (150 decibels) that can permanently damage hearing from 300 meters away...

Finally, to convince the good people of the good fight of the war on pirates—taking care to remove piracy from every political, social, historical, or economic context—you find on dry land many institutes selling their criminal or geostrategic expertise. Military or civilian consultants of all stripes occupy conferences and television line-ups and feed their science on televised reports such as *Thalassa*, focused solely on the military war that's happening, glossing over its causes. University postgrads, whose studies on piracy are financed by funds close to the insurance companies, complete the picture. With such armchair strategists, those nasty pirates better watch out! All there's left to do is launch the navy into the reconquest of the South Seas.

Little Plunders and Big Operations

Military Repression

Faced with acts of piracy disrupting the circulation of ships on one of the busiest routes of the planet, most maritime powers have considerably reinforced their military presence in the Gulf of Aden, a geostrategic zone of primary importance for states aiming to play a role on the world stage.

So since 2008, major world powers have sent dozens of warships and planes as well as thousands of soldiers to the Indian Ocean. To do this western states have leaned on established military bases in the region in Bahrain, Abu Dhabi, or Djibouti, where France has maintained a strong military presence since the official decolonization of the territory in 1977. A veritable armada now constantly patrols around the Horn of Africa: ships from the Atalante operation launched by the European Union (EU) in December 2008; the three US naval Combined Task Forces of which one, the CTF 151, is entirely devoted to the fight against Somali pirates; NATO forces involved in the antipiracy operation Ocean Shield launched in 2009; the French command in the Indian Ocean (ALINDIEN); the Royal Navy... This disparate fleet is also joined by ships from the navies of India, China, Russia, Saudi Arabia, Malaysia, and even Iran, more or less always cruising the zone.³² Each year new states join in, like Ireland and Romania in 2012, or Ukraine, who announced that in 2013 it would send ships so that it too could participate in the war against

32 *Rapport du Sénat* n° 369 (2009-2010) by André Dulait, written on behalf of the commission on foreign affairs and filed on March 30th, 2010

the pirates.

The various flotillas cooperate with the most cordial understanding, thusly fulfilling recommendations issued by the UN Security Council in 2008: establish “an international cooperation mechanism to act as a common point of contact” and “effectively coordinate current and future counter-piracy operations.”³³ Thusly, official dispatches indicate regular exchanges and reciprocal invitations between captains and other officers from various navies – Chinese and French, French and American, French and Russian, etc. In short, a little internationalism and camaraderie in a world of brutes...³⁴ It is also important to underline that the Somalis, for their part, are aware that this international armada, since its appearance along their coastline, is essentially a protection operation for ships that heedlessly pillage and pollute in their territorial waters...

So the Somali pirates can pride themselves on being considered, with radical Islamists, terrorists, and narco-traffickers, among the figures of The Enemy who succeeded the Bolshevik ogre of days past and are supposed to fill Western consumers with dread, pushing them to join the sacred (and overly-armed) union among the states. It should be said that the pirates, aboard their frail skiffs with their pitiful pea-shooters are threatening the Western³⁵ energy

33 Resolution 1851, adopted 16 December, 2008

34 About every three months, on the American base in Bahrain, the piracy information sharing system SHADE, meets. One hundred forty-five delegates from naval forces, political groups or maritime industry may all attend. Nearly all of the countries affected by piracy are represented (Chinese and Russians included, but not the Iranians). (Source: Bruxelles2)

35 30% of the world's crude petroleum passes through the Gulf of

junkies' supply, hindering juicy commercial exchanges, and causing some losses to multinational corporations: *that* is their unpardonable crime.



Let's remember that those who pillage ships on the high seas, block commercial routes, or even endanger maritime communications, have been considered by sovereign states since antiquity, to be the "enemies common to all" (*communis hostis omnium*³⁶) demons against whom all of mankind must declare war. "Those who commit acts of theft on the seas are considered enemies of humanity" declared Mauritian judge Bernard Sik Yuen in May 2012; Yuen being on the cutting edge in the judicial repression of piracy. Three centuries after the final saga of the old buccaneer, this juridico-moral approach has not changed, even if it has hardly convinced the public, who is passionate for the adventures of plunderers of the seas. So the questions of piracy and its repression are coming back to the fore of the international stage. These past few years, it has been the object, under impetus from the US and France, of several debates at the UN and resolutions adopted by this world police force that is supposed to be the Security Council.

Aden, 70% of Chinese oil, and 80% of Japanese oil.

36 Cicero. On the various terms used to designate pirates across different periods of history, see *L'ennemi de tous: le pirate contre les nations* by Daniel Heller-Roaze (Le Seuil, 2010). See also the article that followed a seminar on piracy, on the Minister of Defense's website (defense.gouv.fr) and an article on piracy as an enemy of mankind on eurozine.com.

In May 2008 the first resolution,³⁷ ratifying military reinforcements in the Gulf of Aden, was unanimously adopted. It was then given the adornments that virtuous democracies often rig up when they decide to use force: implicating humanitarian aid. So the resolution insisted on the necessity of protecting the World Food Program ships that deliver provisions to Somalia.³⁸ It is customary, since the end of the last century, that aid to populations serves to justify the military operations of major powers, under the guise of the “just war,” which serve much more real but far less speakable strategic objectives.

On the pretext of always better arming the arm that strikes to better protect the hand that heals, the international community continues to intensify its fight against these pirates who are preventing the powerful from trading as they please and so harming the smooth functioning of the world. A month later, in June 2008, still under the impetus of France and the US, a new resolution was ratified³⁹ that expanded the latitude granted to international powers to repress piracy in Somalia’s territorial waters. It authorized their fleets, for an initial period of six months, to enter Somali territorial waters, provided that they are allowed to do so by the Somali Transitional Federal Government – which is completely under their tutelage – and to use military force to repress acts of piracy and

37 Resolution 1814, 15 May, 2008

38 In 2011, the second year of the deepening famine in Somalia the WFP needed an additional 250 million Euros to ensure aid for the next six months, and only got half of that (*Le Monde*, 18 August 2011), which speaks volumes about the West’s priorities; it dedicates infinitely greater sums to police the Indian Ocean.

39 Resolution 1816, 2 June, 2008.

armed robbery at sea. Facing reluctance from several Asian countries, like Indonesia, themselves affected by piracy but fearing that this resolution will create an unfortunate precedent for their international integrity, it is specified that these resolutions could only apply to the case of Somalia.

The resolution was based on the Montego Bay Convention,⁴⁰ signed in 1982 by several countries (but not the US) to establish maritime law and define the limits of territorial waters, which define the juridical scope of the fight against piracy. Until then, this convention made any intervention on Somali territory impossible. But the law will always adjust to the needs of the strongest, and another resolution (1851) was then concocted to give American and European military forces a wide range of capabilities for going and arresting suspected pirates on Somali soil. It insists on the necessity of promoting the arrest and judicial treatment of pirates and allows countries authorized by the TFG to intervene in Somali territory. These actions on land must of course be carried out in continuity with an intervention at sea, and cannot be managed in an autonomous way in Somali territory.

In concrete terms, a pursuit of pirates began at sea could continue on land, and suspects could be arrested there by foreign troops. Somewhat in anticipation of this resolution, eight months earlier (11 April 2008), the French Army had arrested the suspected participants in the boarding and taking of hostages of the *Ponant* while they were traveling in a pickup in Somali territory shortly after the ransom-hostage

40 Article 101 of the UN Convention on the Law of the Sea, also known as the Montego Bay Convention, see pages 45-46.

exchange. In the end, the UN Security Council resolution simply condoned after the fact the “right of pursuit” of which France had already made use.

At the time it happened, the intervention of the French military on Somali soil had been authorized in just a few minutes, following a simple telephone call from president Nicolas Sarkozy to his counterpart in the transitory phantom-government of Somalia. Which just goes to show that, in life, sometimes it's just as simple as a phone call... except when one wonders how, in the space of a few minutes, the French president could connect with a representative of a state that everyone then insisted didn't exist and which had absolutely no diplomatic representation in France—and vice versa, since the “special plenipotentiary ambassador of the French Republic to the Federal Republic of Somalia” resides in Nairobi, in Kenya.

One is clearly right to wonder about the validity of a formal authorization given to France to intervene. April 14th, 2008, Bernard Kouchner, then Minister of Foreign Affairs, indicated for that matter that when it came to the conveying of pirates to France: “We are still not very sure about Somalia's agreement on this. We are working on this matter from the juridical point of view with the Minister of Justice.” The next day, April 15th, 2008, Prime Minister François Fillon declared to the National Assembly: “*These pirates presently find themselves on a French boat, and we are waiting for confirmation from President Youssouf and Somali authorities to convey them to France, where we would like them to be tried.*”⁴¹ No authorization was then given,

41 “The six pirates from the Ponant will be transported to France”, RMC, 15 April 2008.

even if, at the same time that François Fillon did, a high-ranking French magistrate declared that Somali President Abdoulahi Youssouf had consented to the expulsion of the six men captured in the middle of the Somali desert, in possession of a part of the ransom. At any rate, all of these grey areas were the object of a request made before the European Court of Human Rights, filed by their lawyers. One of these lawyers underlined that it wasn't until April 18th that the Somali government sent a written note authorizing the transfer of the pirates⁴² even though they had already been in France for forty-eight hours.



The fight against the pirates took a new step in repression in March 2012, when the European Council decided to authorize units of the Atalante Mission to direct operations on land, independent of any actions carried out at sea, aiming to eradicate what were thought to be the pirates' logistical bases. Authorized military forces could, from that point on, board suspected pirate ships who anchored at the wharf and then disembark onto Somali soil in order to destroy their logistical installations (gas depots, 4x4 vehicles, arms and ammunition depots...). It is specified that these are intended to be one-off "shock and awe" operations, limited to a two-kilometer wide belt of the coastline.

The UN Security Council would easily ratify this military extension in adopting Resolution 1851 on May 10th, mentioned above, —after the German government had somewhat dragged their feet about vot-

42 Maître d'Olonne, Huffingtonpost, 27 October 2011.

ing in favor of this decision. Five days after this vote, the first aerial strike was carried out by European forces from Atalante and a base of suspected pirates was bombed on the Somali coast. Somali fishermen, whose boats were “collaterally” destroyed during the bombing, protested against the operation—described as “successful” by military officials—and demanded an end to international air strikes against village coasts.

At the end of 2012, several reports and communiqués indicated a decrease⁴³ in acts of piracy in the Gulf of Aden. This diminution is credited to international military action. At the same time it points out that several attacked ships had, surely for reasons connected to insurance, chosen to pay ransom without declaring the attack. These good results were used to encourage and intensify the military interventions. For example, here’s what the adjunct commander of the Atalante operation, Italian rear-admiral Gualtiero Mattesi, declared in September of 2012: *“We have before us a tactical but reversible success. It is essential that the pressure on the pirates and their business model⁴⁴ is maintained, even ramped up. The strategic context, like the situation in Somalia generally, that allows the pirates to operate has not fundamentally changed. In joining forces, counter-piracy efforts are today more effective and can do more than any ship, navy, country, or organization alone.”*

43 The assessment made at the end of November by Atalante, the European operation, counted five ships in the hands of pirates and one hundred forty hostages taken against some thirty ships and more than seven hundred imprisoned sailors two years prior. The number of attacks in 2012 had also fallen markedly. From one hundred sixty-three in 2009, 174 in 2010, one hundred seventy-six in 2011, the number had dropped to thirty-four attacks in November 2012.

44 Tr—English in the original

For each of the coalitions and each of the States that intervene in the region, the aim is above all to ever-strengthen their military presence, for obvious strategic reasons, but above all for economic reasons. So it's from this angle that we should consider the new developments in antipiracy operations carried out by Europe and its allies. These future prospects were put on display during a seminar in Paris in July 2012. Various European military officials, French political figures,⁴⁵ and representatives from the Somali and Djiboutian governments attended. At the seminar, France presented a thirty-month action plan, emphasizing, among other things, the necessity for participation of industry and defense as well as a public-private partnership for financing counter-piracy operations. So during this colloquium, EADS, Thales, and DCNS⁴⁶ were introduced, French corporations that have a lot of interest in continuing the militarization of the Indian Ocean and of hunting pirates, in order to be able to continue selling and testing their various weapons and surveillance equipment.

The industry of repression and legal murder is delighted to be able to experiment with its new toys in this zone of the world. Reps of the companies one by one sang the praises of aerial or underwater drones,⁴⁷ a sound cannon (a weapon emitting a pain-

45 Hervé Morin, Minister of Defense, Jack Lang, tasked by the UN since 2009 with studying piracy in Somalia, and Bernard Attali, as president of Planet Finance

46 DCNS builds frigates for the French military and underwater drones that will be tested in the Indian Ocean

47 For example, the Scan Eagle, a Dutch Navy drone. "Despite the heat, 113°F, the system holds up well, and we haven't had any problem", notes one of the operators. (source: Bruxelles2)

ful sound for those who come near it),⁴⁸ and a laser stun-ray.⁴⁹ Dealers of radar and other detectors and geo-localization systems are having a wonderful time. Thanks to piracy, their portfolios are growing and diversifying with no end in sight.

During the seminar, a new step in counter-piracy in the Gulf of Aden was also invoked: the restoration of State sovereignty and the capacities of intervention at sea, both in Somalia and in other countries of the region through “the acquisition (by the coastal States) of tools that will be put in place.” Among these tools are the creation of a coastal police force and judges. This mission, launched in July 2012 by the EU, carries the name “EucapNestor.”⁵⁰ It has many objectives, which vary depending on whether the action is taking place in Somalia or in neighboring countries.

Promoters of the operation inform us that a basic initial training, taking place first in Djibouti for security reasons, should allow them to train twelve hundred future police officers from Puntland in the rudiments of the job: discipline, working as a team, carrying a weapon, the basics of investigation, gathering evidence, put-

48 This sound canon, specially tuned for the Navy, now serves to maintain order on land.

49 This laser, according to its designers, will be capable of launching a visual warning to pirates at a distance beyond two Km and to disorient attackers at a shorter distance, so that their weapons cannot be effectively used.

50 As usual, the military did not choose this name by chance. In Greek mythology and notably in *The Iliad*, Nestor is a man of experience whose advice is respectfully listened to by all of the Achaeans, and who still valiantly fights on the fields of battle. In this mission, Europe seems to consider itself to be the modern-day version of the old sage and warrior Nestor...

ting together a case file. In short, all the savoir-faire of a good French gendarme, since the national navy and the maritime gendarmerie of France are involved first and foremost in this training mission...

An initial exercise took place in November 2012, in Djibouti, putting a ship from European anti-piracy forces on the scene, along with the Djiboutian Navy, Coast Guard and Police. The aim was to transport a "suspected pirate" prisoner on board a European military ship, to the international airport in Djibouti, with transfers at sea from one boat to another. The exercise aimed to allow everyone in this little world to gain mutual understanding of respective procedures, in order to better work together.

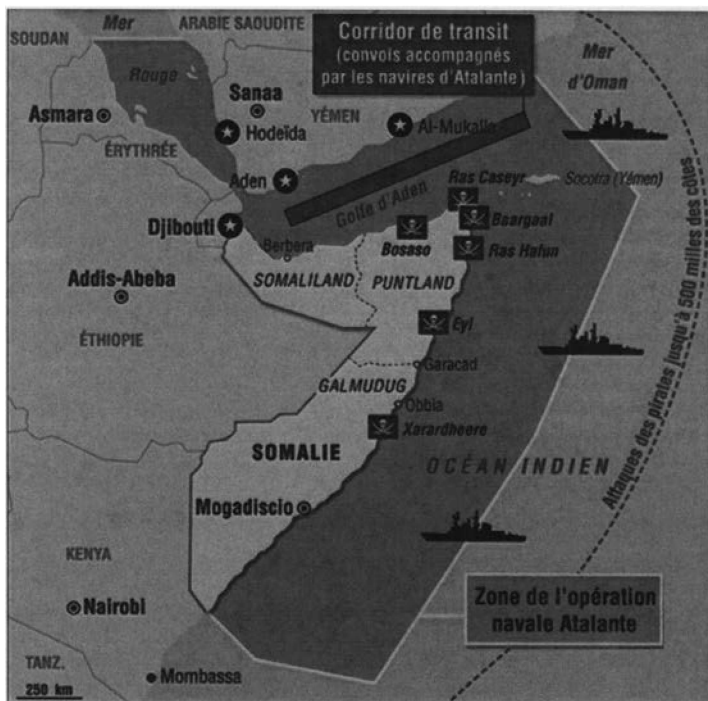
If Eucap Nestor planned to train a maritime police force in the countries of the region in order to reinforce their own maritime capacities, meaning their capacity for repressive interventions, this is not the case with regards to Somalia. The mandate of this mission there is to form a coastal police force, to be positioned to hunt down pirate base camps, rather than a police at sea, as a certain mistrust is felt when encountering Somalis, whose former coast guards are suspected of having become pirates.⁵¹

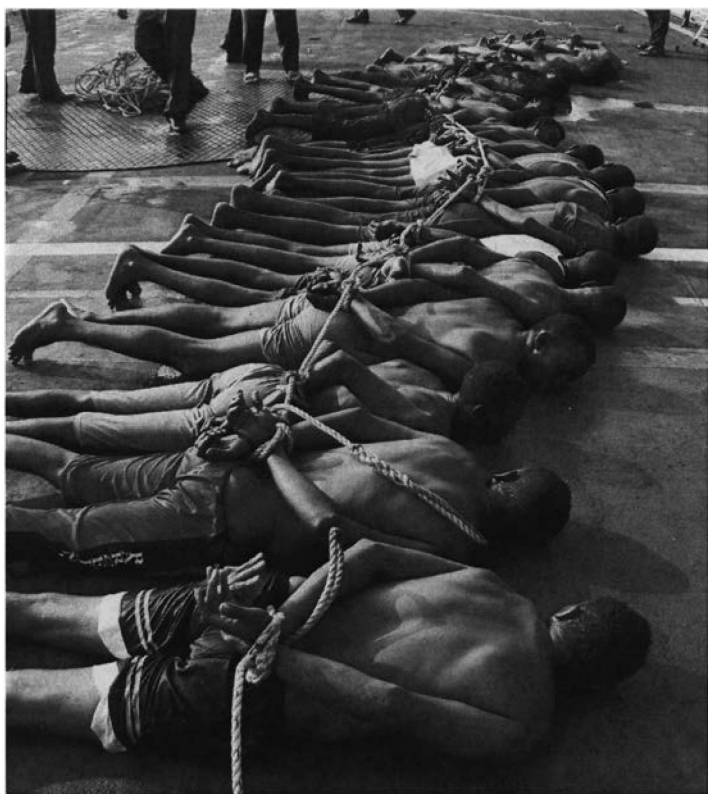
The training of local magistrates and legislative assistance, planning to update laws and the preparations to build closely related infrastructure (namely,

51 On the subject of Europe's reticence to form a coast guard in Somalia, in December 2012, eight soldiers from Puntland, charged with guarding a South Korean cement ship taken while it was polluting the coast, preferred to capture the ship and its crew in order to take it to southern Somalia. In the end they were taken to Puntland where they will be tried. (source: Bruxelles2)

prisons and tribunals), constitutes one of the other facets of this operation, as judicial repression goes hand in hand with armed repression, in counter-piracy as elsewhere... So the Eucap Nestor operation includes a good twenty or so legislative advisors to local governments, in particular, to Ministers of Justice. A network will be put in place to link these advisors and their national counterparts in the different countries involved.

In its propaganda articles, the French Navy boasts about the establishment of Eucap Nestor, underlining the complementarity of actions on land and at sea, as well as the civil and military facets of counter-piracy operations. Without extrapolating, it is easy to deduce from it all, that – thanks to this new mission, Europe, and thus, France – sees this as an opportunity to spread its web in this region of the world, where it is already a strong presence.





Punish Unresigned Poverty

The Legal Arsenal

Since antiquity, piracy has been designated as an international crime, bestowing all states with the right to repress it. One might think that the sea is a space without borders but, although they are not visible, the borders are very real, a reflection of the rest of the world. Maritime law has for a long time limited the portion governed by state sovereignty to a strip roughly three nautical miles from the coast. But the realization that this space could be exploited⁵² in the same manner as all other resources on the planet, means that little by little it has expanded well beyond the claims of territorial properties. The different states of the world have thus divided up the oceans and seas. Starting at the beginning of the 20th Century, maritime territories were shared through accords between world powers and international conventions, as well as through canon fire and various penal sanctions for those who would not submit. One of the conventions most often put forward, whether it be regarding the sharing of waters or counter-piracy, is the Montego Bay⁵³ Convention. In it, piracy is legally defined in these terms:

52 Fish, petroleum, and other mineral resources, energy production, waste storage sites...

53 UN Convention on the Law of the Sea (UNCLOS according to the english acronym), December 10th, 1982. The definition of piracy included therein reworks the definition elaborated during the Geneva Conference on the Law of the Sea of 29 April 1958 (article 15). There are other maritime laws, unique to each state, as well as regional cooperation models such as the RECAAP Accord, signed in 1994 at Japan's initiative.

- a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed: (I) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft; (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any state;
- b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;
- c) any act of inciting or intentionally facilitating an act described in subparagraph (a) or (b).

Since each state has its own interests to defend, there are other texts and accords governing the repression of illicit acts committed at sea. For example, the US, which has not ratified the Montego Bay Convention, is party to in the SUA47 Convention, which they prompted and signed in Rome in 1988, following the hijacking of the Italian liner *Achille Lauro*.⁵⁴

After September 11th, 2001, the US had hoped to reinforce this convention. In particular, they created a “duty to repress acts that are detrimental to the security of maritime navigation” and facilitated the hand-

54 In October 1985, a commando from the Palestinian Liberation Front hijacked the *Achille Lauro*—an Italian cruise ship carrying a hundred passengers—on the Mediterranean. An American was executed during the hostage taking. A crisis ensued between the US and Italy, with Italy hoping to keep control over the matter and settle it through diplomatic means, while the US wanted to intervene militarily. The judicial procedures for hostage-takers was then the object of bitter negotiations, but in the end they were tried in Italy.

ing over and extradition of prisoners. It's within this framework that the US conceives of its intervention in Somali waters—as for the EU, it based its own on the Montego Bay Convention, which is less constraining with regards to the criminalization of piracy.

Under the terms of this latter convention, the state that arrested the pirates is considered legally competent to try them, regardless of their nationality or that of their victims.⁵⁵ However, this jurisdiction, considered universal,⁵⁶ was not transposed to the judicial systems of each nation and so is not always applicable. In effect, there is no real will to assume the responsibility—at the core of the EU, numerous countries do not necessarily want to assume the legal obligations or the pirates' presence in their national territory. For that matter, legal proceedings for pirates arrested in the framework of the Montego Bay Convention is a right of the state that carried out the arrest—not an obligation—contrary to the convention on which the Americans base their actions. This right is generally not used except in the case where citizens or national interests were directly threatened. When it is used, the problem

55 Article 105: “On the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. The courts of the State which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships, aircraft or property, subject to the rights of third parties acting in good faith.” In the framework of the SUA convention, on the other hand, a state can only exercise its jurisdiction if it has been the victim of the act or if the act happened within its territorial waters.

56 Universal jurisdiction is “the acknowledgment of a state's competence for judging infractions committed by individuals outside its territory, while neither the actor nor the victim are its own nationals.”

is then knowing how and where to hold the trial.

As was already mentioned in the chapter on military repression, it is essentially France⁵⁷ and the US—these two countries that were of course galvanized by the Ponant and Maersk Alabama affairs—that in 2008, successfully pressed the UN Security Council to adopt specific resolutions aimed at fighting piracy in the Gulf of Aden. Their different approaches have at times been at odds, but all the major world powers involved in the economic, military, and territorial management of the Indian Ocean were able to come to understandings in order to share the cake.

If the military facet of counter-piracy repression rapidly flourished, difficulties involving the judicial treatment of captured pirates quickly arose. Starting in 2008, cases of pirates arrested by the forces on the ground began to move through the courts and suspects had to be released because of the lack of a clear legal framework allowing for them to be prosecuted. For example, ten Somali pirates arrested on September 10th, 2008, by the Danish frigate Absalon were released, as legal experts were unsure of how to try them. Indeed, Danish law only applies if the victims or the pirates are of Danish nationality. Danish

57 Through France, all of the EU member states share a common approach in counter-piracy operations (excluding the UK, which has its own logic as an ex-maritime and ex-colonial power, while being more subservient to the US). France is more particularly concerned with everything that happens in this region of the world since it is the only large western coastal state in the Indian Ocean, because of the speck of empire that constitutes its *île de la Réunion*, a *département d'outre-mer* strategically situated and copiously subsidized. This zone is of vital importance to the French economy, in both the transport of merchandize and fishing.

judicial authorities also feared that the death penalty could be used if the pirates were rendered to Somalia. Again in 2008 a German ship could not pursue pirates, since according to fundamental German law the jurisdiction for arrest and pursuit belongs to federal police.

In concrete terms, the question is where to try and imprison suspected pirates once they are arrested. The complexity and multiplicity of international accords and conventions,⁵⁸ the lack of will of certain countries to assume the responsibility of this aspect of the repression, and also the fact that Somalia is a country without a state suited to exercise legal authority, are all arguments put forth by those who advocate bringing pirates before tribunals of the same countries as the military forces that captured them.

In December 2008, the UN Security Council noted *"with concern that the lack of capacity, domestic legislation, and clarity about how to dispose of pirates after their capture, has hindered more robust international action against the pirates off the coast of Somalia and in some cases led to pirates being released without facing justice."* While it was expanding the military prerogatives of major powers, the UN Security Council also concerned itself with enabling as many of the arrested pirates as possible to be tried and punished. Some states, like France—the good student and driving force of the international counter-piracy coalition—took advantage

58 The Montego Bay and SUA conventions are mentioned here, but other international accords also exist that deal with the judicial treatment of pirates, for example the RECAAP Accord (signed in 1994 at Japan's initiative), the Hostages Convention (signed in New York in December 1979), and also the UN Convention against Organized Crime (2000).

of this opportunity to freshen up national legislation (law 2011-13 of 5 January 2011).

Another resolution (Resolution 1851 of December 16th, 2008), put forward by the United States, was then issued. It invites countries who wish to “*conclude special agreements or arrangements with countries willing to take custody of pirates in order to embark law enforcement officials [...] from the latter countries to facilitate the investigation and prosecution of persons detained as a result of operations conducted under this resolution.*” This is what the Americans call “shiprider”, the name given to American officers who have police powers while aboard warships or patrolships from other countries.

In order to unify the different national initiatives, Resolution 1851 sets up international cooperation through a single point of contact, and creates an information coordination center. One of the six objectives, defined by this contact group at its first meeting on January 14th, 2009, was to strengthen the legal framework for pursuing, detaining, and arresting pirates.⁵⁹

On January 29th, 2009, in Djibouti, during a conference organized by the International Maritime Organization (IMO), nine states signed an accord setting up the creation of three piracy information centers,⁶⁰ as well as the opening of a regional training center in

59 The six objectives are to expand intelligence capabilities in the region; establish a mechanism for coordinating counter-piracy operations; strengthen the legal framework for the arrest: prosecution and detention of pirates; inform the maritime world and advise it on strengthening security; strengthen diplomatic efforts; constrain the pirates' financial operations.

60 Mombasa, Dar es-Salaam, and Sanaa

Djibouti for counter-piracy agents. Signatory states⁶¹ committed to modifying their laws in order to more efficiently judge pirates.

To resolve the prickly question of knowing where to judge pirates in the absence of the Somali state's capacity to do so, and ruling out (outside of big media moments) their systematic transfer to the national territory of their naval captors, it became common to preferentially prosecute and punish them in the coastal states on the Indian Ocean, who are effectively vassalized by the old colonial powers and new military empires.

Moving in this direction, in March 2009 the EU (along with Canada and Great Britain), followed the US, which a month earlier had passed an accord with Kenya that allowed some arrested pirates to be handed over to justice in this country. This accord fixes the conditions and procedures for rendering suspects in order to conform to the 1984 UN Convention, which forbids the death penalty and inhuman or degrading treatment.

This human-rightist concern in the fight against Somali pirates, though they are designated enemies of the human race, aims to affirm the humanitarian face of the maritime power intervention, preserving democratic appearances. In short, they had to display a dissuasive firmness while more or less formally guaranteeing the rights of individuals. This is clearly not always compatible with the fact that these are naval soldiers intervene in the territory, even though, juridically speaking, there is no war happening in the Indian

61 Djibouti, Ethiopia, Kenya, Madagascar, the Maldives, the Seychelles, Somalia, Yemen, and Tanzania

Ocean.⁶² Moreover, the procedural guarantees with regards to the arrest, imprisonment, and judicial treatment of the pirates, are necessary so that the judicial institution can function as a conviction machine without too much squeaking from the cogs.

In October 2009, leaders of the *Atalante* mission signed an accord with the Seychelles in order to be able to transfer pirates there when European sailors apprehend them. More prudent than Kenya, the government of the Seychelles limited its jurisdiction to acts that take place in its territorial waters or its interior waters and reserved the right to refuse trying some pirates.⁶³ The first verdict of the Supreme Court of the Seychelles was ruled on July 26th 2010: eleven Somali pirates were condemned to sentences of ten years in prison.

None of these accords conclude, of course, without compensation for the signatory countries of the region, notably financial and material aid from the

62 *"France is a democratic country and it has rules. We are not in a state of open war, as the pirates are bandits and not soldiers, and we are acting under the supervision of magistrates who analyze our activities and the respect of rules. This is how it happens today and I feel like it is going really well, even if it sometimes complicates counter-piracy operations: it is enough to see the reactions in France when someone is killed by a stray bullet, just imagine what would happen with police blunders like those that sometimes occur with the Russians, Indians, or Chinese, which can cost the lives of thirty-some people"* (Vice Admiral Merer, former maritime prefect and former commander of the ALINDIEN command, February 21st, 2012, during the Café-Défense meeting devoted to maritime piracy and organized by the Club du Millénaire near the school of political science [Sciences Po] in Lille).

63 In the accord, it is from now on up to the EU to repatriate pirates who are taken into custody illegally.

EU and the UN, aimed at giving them the means to manage the influx of pirates into their tribunals and their detention facilities. At the same time, still in 2009, an accord was concluded with Djibouti to allow the transfer of arrested pirates to neighboring or European states, like France. French military bases, and since 2002, US ones, in Djibouti are for that matter of crucial importance in counter-piracy operations. As Jean-Pierre Labonne, the second commander of the *Atalante* operation, stated: "Djibouti constitutes an absolutely ideal mooring point."⁶⁴

Also at this time, some states individually passed accords with countries in the Gulf of Aden region, independent of the military coalition in which they take part. Starting in 2008, imitating the US, France thusly handed over suspected pirates to Puntland, even though the policy of the EU, and more broadly the UN, had been until then to not hand pirates over to this body that lacks any diplomatic recognition: "*When France detains pirates, it hands them over to Puntland and through verbal agreements our authorities ensure that there are no threats of execution and that human rights will be respected,*" stated the deputy of Finistère, Christian Ménard, author of the information briefing concerning defense and armed forces.⁶⁵ That reveals a great confidence in the humanism and legalism of the warlords who exercise power there.

These famous exchanges of words, intended to reassure all democratic people, were evoked on several occasions, notably in the Senate, in May 2010, by minister Henri de Raincourt to Robert Badinter who

64 *La Nation* (Djiboutian daily), 15 April 2009

65 Assemblée nationale [of France], December 14th, 2010 session

worried that France was subcontracting the judicial processes of Somali pirates arrested by its army. “We cannot bring them all to France, we really should remit the pirates to another country, even if their prisons aren’t three-star,” senator André Dulait declared in a pragmatic tone the same day. French prisons, it is well known, are exemplary, and not all the non-whites of the world would get to benefit from their sumptuous detention conditions.

Just like the tens of thousands of prisoners incarcerated in France, the twenty-two Somalis who experienced the delights of Fresnes, Fleury-Mérogis, or La Santé, would appreciate the reference to three-stars of the French prisons (where the suicide rate is two times higher than the European average): most of them were put on sedatives, treated badly, and isolated, which brought on serious prison psychoses in two of them and various disorders in almost all of them. Returning to Puntland and its little arrangements with France, the piracy section on the blog Bruxelles2 indicate that out of the two hundred forty sentences pronounced against pirates by a tribunal of this country between 2006 and 2011, the author indicated one death penalty. But let’s not worry, it was obviously not meted out on a pirate brought in by the French Navy.

According to the census taken by Bruxelles2, the other sentences pronounced during this period ranged from three to eighteen years in prison. Among the suspected pirates that France handed over to Puntland authorities between 2008 and 2010, eighty-three have been condemned to sentences of five to fifteen years in prison. In November 2009, Mohamed Abdi Aware, a Somali judge from Puntland involved in han-

dling piracy affairs, was assassinated in Bosaso. The papers at the time attributed the act to either pirates or al-Shebab militants—the two at any rate serving as bogeymen. France and the US regularly hand over suspects not only to Puntland, but also to Somalia and Somaliland. This rather practical solution would thus be taken up again and the extension to other countries recommended.

On April 7th, 2010, Kenya canceled, with six-months notice, its agreement to take control of pirates apprehended by military forces in the Indian Ocean: its judicial and penitentiary infrastructures were overwhelmed, the country could no longer meet the demands. What to do with the captured pirates? How to do it so that they are not released and that they are punished by the democratic book? As the international military armada reinforced its presence in the Gulf of Aden and increased its arrest rate, little by little these questions became more and more crucial and pressing... Nor do the military officials enjoy feeling like they were working for nothing, and, most of all, they only like impunity when it applies to them.⁶⁶

Faced with this potential impunity, in April 2010, the UN Security Council adopted a resolution

66 On this matter, during military operations of pirate arrests, there are often pirates or even other people killed, those who fall under the “collateral damage” column. See appendix I, page 151, the list, unfortunately and doubtlessly incomplete, that we were able to put together through reading various sites and military blogs. Apparently, when a family of eight natives is killed in passing by French commandos (as during the failed liberation mission of French hostage Denis Robert from the DGSE), it’s total impunity that applies to our valiant heroes and kings of blunder, not that that poses a problem for western journalists and politicians.

(resolution 1918 from April 27th 2010) proposed by Russia, affirming that *“the failure to prosecute persons responsible for acts of piracy and armed robbery at sea off the coast of Somalia undermined international anti-piracy efforts”* and inviting *“all States, including States in the region, to criminalize piracy under their domestic law and favourably consider the prosecution of suspected, and imprisonment of convicted, pirates apprehended off the coast of Somalia, consistent with applicable international human rights law.”* The efforts led by these partners, Kenya and the Seychelles, were hailed by the Security Council. This resolution emphasizes the necessity of reinforcing the judicial and penitentiary apparatuses of the states of the region that have agreed to prosecute pirates, while underlining the necessity for more countries to agree to judge those who commit acts of piracy and armed theft at sea. Also mentioned is the installation of a regional prosecution center in the Seychelles, which finally opened in February 2013 under the name RAPPIC (Regional Anti-Piracy Prosecutions Intelligence Coordination Centre).



In 2010, a report from Ban Ki Moon, the UN Secretary General, revealed that in the first semester, commanders from European and NATO navel forces along the coast of Somalia had to free around seven hundred apprehended suspects⁶⁷ and that a little more than a hundred people were brought before the courts. Hardly satisfied with such mediocre results, Ban Ki Moon recommended the reinforcement of the existing local struc-

⁶⁷ Source: Bruxelles2

tures to allow the judging and punishment of pirates in the region. The solution of turning the pirates over to the semi-autonomous jurisdictions situated in the region, Puntland and Somaliland, already used since 2008 by the US and France, is promoted by the training of justice personnel in addition the contribution of material support (notably the construction of prisons).

At the time he released his report, Ban Ki Moon named the legal expert and former French minister Jack Lang as special advisor on legal questions relating to piracy along the Somali coast. The latter had to “identify” the steps to take in order to prosecute and incarcerate people implicated in these activities and to propose new solutions for the judicial treatment of Somali pirates.

On January 25th, 2011, Jack Lang released an alarmist report on the rise of piracy. He underlined the necessity to “Somalize” the fight against this “extremely grave” exponential phenomenon. “Somalize” the counterpiracy fight—that surely means, following the example of France and the US, the ability to consign the prickly question of prosecution and imprisonment of pirates to Puntland and Somaliland.

So, the creation of a special tribunal and a prison with a capacity for five hundred people is planned in each of these two places, despite the fact that they are not recognized by the UN. Pirates apprehended along the coast can be tried and imprisoned in them, and those incarcerated in other states can be transferred to them, to avoid overfilling the prisons of the incarcerating states. It is worth noting that the construction of the prison in Bosaso, in Puntland, and the renovation of the ones in Harghisa and Somaliland, punish unresigned poverty

the motivations were not only so-called humanitarian, but also security-based. In each case, these new detention areas were very quickly in use, the structures were ready less than two years after Lang's official proposals. During a meeting on February 9th, 2011, at the National Assembly, Jack Lang admitted to having visited the EU-financed prison in Somaliland. "It's a job rather well done, with good economic sense and serious officials," he affirmed. The first transfers of pirates—convicted and imprisoned in the Seychelles—to these prisons, began in December 2012.

Among other proposals,⁶⁸ Jack Lang called for the increase of transfer accords for trials and incarceration, such as those already signed by the Seychelles and Kenya, assuring that appropriate support would be in place for states engaged in this process. On April 11th, 2011, the UN Security Council once again made a promise in this direction, by trotting out resolution 1918 once again, this time under number 1976. This one presses the countries of the Gulf of Aden and the Indian Ocean to participate in the repressive efforts underway by the armies of the Axis of Good.

In July 2011, after long negotiations, a third accord is signed with one of the countries of the region: Maurice Island, which agreed to let European forces transfer to its territory pirates apprehended as part of the Atalante mission. The fine-tuning of this accord was difficult, many points posed problems—notably the questions of the death penalty, the piracy arrest

68 On the subject of judicial policy, Lang also proposed the creation of an extra-territorial Somali court, recommending that it be in Arusha, Tanzania (also seat of the African Court of Human Rights) as well as an international model case report.

zone, and the option for the Mauritian government to refuse certain transfers, following the accord made with the Seychelles. Thanks to 4 million euros of European financing, Maurice Island began adapting its judicial system and had a new wing of its Port-Louis prison built, nicknamed “Alcatraz” ... In January 2013, twelve pirates arrested by the French and American militaries were transferred there, waiting for trial with a Mauritian special tribunal. If they are sentenced to prison, they will be sent to Puntland – where what is functioning as a judicial system has the advantage of not being too procedural...

As for us, who dream of a world without prison, we would not risk advocating one prison system over another, under the pretext that European or American prisons would be, all things considered, better than African prisons – above all when we know what twenty-two accused Somali pirates experienced in our three-star prisons.⁶⁹ But it is interesting to note to what point the leaders of our representative democracies know how to show their practical side when it suits them...

According to specialists of all stripes – and we have seen that, when it comes to rambling on about Somalia, they’re lining up in droves – to judge and punish the pirates in the region where they operate would have had a more dissuasive effect. Excepting its supposed preventative dimension and its “hide the pirates so that I can’t see them,” this solution also has the advantage of being cost effective: the average annual cost of a detainee is \$730 in Africa against \$48,187 in Europe and \$28,284 in the US. Also, the average

69 See pages 69-145 for sporadic reports of the trials that have taken place in France.

cost price of a trial is \$238 in Africa while in Europe it is \$66,927 and in the US \$307,355.⁷⁰

In 2011, one thousand eighty-nine Somali pirates were imprisoned in the world, six hundred twenty-four of whom were in continental Africa and two hundred seven in Kenya or the Seychelles. According to the UN Security Council, about twenty countries detained Somalis accused of piracy in the month of February 2012: Yemen,⁷¹ Abu Dhabi, Madagascar, India, Japan, Korea, the US, France, the Netherlands, Italy, Spain, Germany⁷² ... As we write these lines, many among them await trial; for others, the verdicts have been served. Some of the sentences are very severe, notably in the US (several life sentences), in Spain (two pirates each sentenced to four hundred thirty-nine years in prison following the attack of the tuna vessel *Alakrana*), and in South Korea (in May 2011, one life sentence and three thirteen to fifteen year sentences for pirates who hijacked a South Korean ship).

Everywhere they hammer on the fact that the sentences meted out to the pirates should be examples. "The days of unbridled armed robbery and extortion at sea are over," declared Janice K. Fedarczyk, Assistant Director in Charge of the FBI in New York, after the

70 Report "The Economic Cost of Somali Piracy 2011." These figures date to the beginning of 2011.

71 Some countries like Russia, India, and Denmark have released suspects to the Yemeni authorities who, for their part, took in dozens of pirates these past two years. Heavy sentences against pirates, several of which were death penalties, have been issued by this country's courts.

72 In Germany in the spring of 2012, an incendiary attack took place against an army building in solidarity with the Somali pirates and to denounce the German Army's involvement in the *Atalante* operation.

life sentences given by the American judge against the Somali pirates. This happened to be one of the leitmotifs of the prosecuting attorney who, in the spring of 2012, officiated in the trial of the accused pirates of the *Ponant*, at the Assises in Paris, and constantly held up the American policy as an example: "We have to send a strong message to the pirates," he repeated, even going so far as to claim it's for the good of Somalia.

Faced with the abduction and detention of some of their own, the Somali pirates started organizing solidarity reprisals. In 2011 for example, several Indian ships were captured by pirates who, in exchange for the liberation of sailors they took hostage, demanded the liberation of their comrades detained in India.⁷³ It should be known that at the beginning of that same year, eighty-nine Somalis were taken prisoner by the Indian Navy,⁷⁴ while only fifteen among them were already detained in India. In April 2009, Somalis took two British amateur yachters hostage to negotiate the liberation of other pirates. In the end, disagreement began to emerge among those carrying out the action. One Abdi Yare, appearing as a pirate, declared to the AFP: *"You heard about the seven pirates who were arrested by foreign forces after the attack [of a French tuna vessel on April 27, 2009]. Some among us insist on negotiating an exchange of two [hostages] for our friends, while others*

73 Afcan citing Somalia Report. A pirate going by the name Farah explains: "We will not release any Indian sailor until the Indian government releases our imprisoned comrades."

74 Sixty-one Somalis were taken prisoner by the Indian Navy in march 2011, twenty-eight more in February. The Indian Navy has also executed at least twenty-seven (source: Bruxelles2).

*only want to discuss a ransom.”*⁷⁵

These offensive solidarity reactions on the part of the pirates, who face global repression raining down on them, are rarely mentioned by the media. Evidently you have to avoid showing the pirates in an even mildly favorable light. Some commentators claim that the buccaneers are “sending a message” by showing solidarity or insisting on their social or ecological concerns, like when they bring up overfishing and toxic waste dumping to justify their ill deeds. Even if this were the case, it would obviously be a good war, against the cover-ups and calumnies of the propaganda that exalts the war navies and vilifies the lawless and faithless pirates.

The judicial treatment of the pirates constitutes a sort of global laboratory that enchants legal experts and oppressors of all stripes. Maritime forces begin by sending in the heavy artillery and then adapting laws, regulations, and conventions at their whim to legitimate their monopoly on violence. Thus, at the beginning of January 2013, the American navy intercepted a small craft with twelve suspected pirates aboard, but it let the French navy arrest them and transfer them to a French frigate. The captives were held for almost a month on this frigate before being incarcerated in the Mauritian prison of Alcatraz. If the captives had been held on board an American ship, they could not have been transferred to Maurice Island, as the US had not signed the accord with this country, as the EU had.

Using piracy in Somalia as an excuse, several states were able to advance legislation in more repressive directions. For example, France adopted a special law that authorizes the deprivation of rights on board

⁷⁵ RTBF (Saturday, October 31st, 2009).

A forty-page guide was put out for commanders and officers of the national navy to help them better manage the detention of suspects—in other words, to avoid possible errors that could compromise the procedure. In this guide, a specific vocabulary is recommended for members of the team: “detainee” instead of “prisoner”, “administrative registration” in place of “hearing”, “collection of spontaneous declarations” in place of “confessions” ... This newspeak which is somewhat reminiscent of that used to describe the imprisonment of so-called *sans-papiers* takes part in a fiction that follows the same principle: act as if an administrative detention were distinct from a still very real deprivation of liberty.

military ships, bases, or aircraft during the transfer of suspected pirates to judicial authorities. In 2008, during the French military intervention seeking to free the yacht *Carré d’As*, the six suspected pirates taken in for questioning were for ten days juggled between ships, military planes, and the military base in Djibouti, before being taken to France and brought before a justice.

In French law, police custody regulations only allow detention to be prolonged under exception circumstances, and only to six days,⁷⁶ so this ten-day detention would correspond to what legal scholars discreetly call a “no-rights zone,” meaning an abuse of power. Never mind, force is what shapes rights and so, when the representatives and senators legislated in

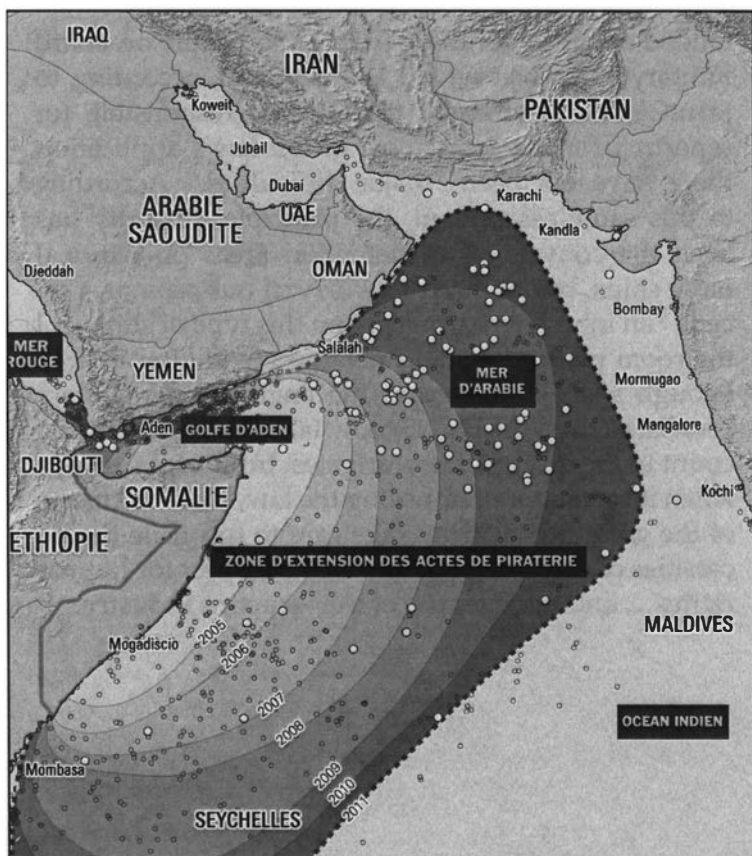
76 Only in the legal framework for terrorism—but legal experts agree that piracy does not fall under terrorism.

January 2011 to spruce up antipiracy legislation, they decided to draw from the pre-trial detention model in creating detention regulations specific to pirates. These regulations, more flexible than those of police custody, apply in France specifically to people in irregular situations and allow the privation of liberty for forty-five days following a simple administrative decision put under the control of a judge of liberties and detention (JLD).

The antipiracy law of 2011 goes even further and allows almost anything as far as the privation of liberty goes, since the five-day lockup, administered at a distance by a JLD, is “renewable [...] for the time it takes for the the persons to be rendered to the proper authorities.” Other countries, like Spain, have also adopted new laws going in this same direction.

Drawn up under the pretext of emergency and supposed to apply to specific categories of the population, these laws were opportunely conceived to allow a broader application than those put forth upon their adoption. For example, the regulations for privation of liberty allowed by the French antipiracy law of January 2, 2011, has been used several times since its adoption... but not necessarily against Somali pirates! According to a Senate survey conducted in April 2012, forty people have been imprisoned aboard French vessels under this law; in eight different cases, only two concerned Somali pirates.⁷⁷ The police custody or pro-

⁷⁷ One year after its adoption in the January 5th, 2011 law, the on-board detention measure had been used four times in the Antilles—against, they tell us, narcotraffickers on outboard motor-boats—and twice in the Mediterranean, in the Gulf of Gibraltar region, again in the context of the fight against drug trafficking.



Geographic reach of acts of piracy in the Indian Ocean from 2005 to 2011: The small circles indicate distress signals sent by merchant vessels; the large circles indicate sites of successful attacks for the year 2011 alone, which saw a peak in the number of attacks—before an ebb in 2012, which continued in 2013 under pressure from various naval forces charged with securing the region.

longed detention of these forty or so people on board military ships has served as a test and, according to Jean-Claude Peyronnet, the Senator responsible for reporting for the assessment of the law's application, there have not been "major difficulties." According to this same assessment, the principle difficulty has been the conversion of detention areas on national navy ships, but no need to worry: if our senators concede "an inherent narrowness on this type of ship, [...] the room planned to hold detainees will offer a large enough space." Moreover, the engineers of military vessels, such as the DCNS, now take this factor into account in the design of new frigates. In short, as always when it's a matter of imposing the law, those in charge of the great democracies take care to reconcile the necessities of the use of force with the respect for human rights ... and the interests of the weapons industry.

Piracy Trials on French Soil

Between 2008 and December 31st, 2015, twenty-two suspected pirates had been arrested by the French state, and three were killed at sea by the French army. Eleven are currently incarcerated, seven of whom are in pre-trial custody. The cases are of four recreational crafts that were boarded and hijacked. Three trials have already taken place, and there is one planned for the end of March, 2016, to be held in Paris, for the taking of the Tribal Kat.

- ▲ *The Tribal Kat, boarded in September 2011 (seven charged): the action and the arrests were carried out by the Spanish navy. The seven defendants are being held in pre-trial detention at the Fresnes and Fleury-Mérogis prisons and are awaiting trial.*
- ▲ *The Tanit, boarded in April 2009: on October 18, 2013, the three Somali defendants were sentenced to nine years in prison by the criminal court in Rennes, after five days of trial.*
- ▲ *The Ponant, boarded in April 2008 (six charged): June 14th 2012, three of six Somalis tried for the taking of hostages on this luxury cruise ship have been released from prison: the criminal court in Paris issued two acquittals and a sentence of four years in prison, which was covered by the pre-trial detention carried out by these men since 2008. At the close of more than twelve hours of deliberations, the court issued two sentences of seven years for two of the accused (who admitted to being suppliers to the pirates), and condemned the only one who acknowledged full participation in the operation to ten years in prison. The latter is still serving that sentence.*

- ▲ *The Carré d'As, boarded in September 2008 (six charged): in November 2011, the criminal court issued one acquittal and five sentences ranging from four to eight years in prison. The public prosecutor, who sought the harshest sentences, appealed the six decisions. The accused were charged with abduction and illegal confinement operating as an organized gang, as well as armed robbery: crimes that carry a life sentence. Two out of the six pirates charged were not held in detention when they appeared before the court during the appeal at the beginning of 2013. As a result of the appeal, all the sentences were upheld save a one-year reduction for one of the pirates. One of them was considered "psychiatrically unfit" to appear during the appeal trial. Since June of 2014, there are no longer any Somalis in prison related to this affair.*

The Ponant Trial

First Day of the Hearing

On May 22nd, 2012, at the criminal court in Paris, under a short-lived media deluge, the trial begins of six men accused of having taken part in the April 2008 hijacking of a cruise ship for the rich that sailed under a French flag: the Ponant.

These six men would be, throughout the trial, referred to as pirates, even though most of them had refuted this term. In fact, only one of the six admitted to everything he was accused of and stated that he wanted to explain himself at trial. The charges leveled against him were hijacking of a ship, capture and confinement of several people, criminal conspiracy, and theft committed in an organized gang. The five others were un-

der basically the same charges, except for the hijacking of a ship. They denied the acts they were accused of, and have maintained their innocence since the day, four years prior, they were arrested by the French army while driving along the coast in a pickup on a Somali road. The pirate who acknowledged his part in the operation from the beginning to the end exculpated several of his companions from their capture and repeated throughout the course of this first hearing that they did not participate in the operation. On this note we have elsewhere remarked, during the entire hearing, a certain solidarity between these so-called pirates.

Almost all of them came from the same region of Somalia (Garowe, except for the taxi driver), and they were sharing, at the time of their arrest, one of the rare vehicles available to make the twelve-hour trip to get home. Two of them are brothers, and some of them had been friends since childhood. Some of them acknowledged boarding the ship to supply food or cigarettes while they were holding the hostages, the others claimed that, though they were in the car that was "neutralized" by French commandoes, it was only to make use of one of the rare means of transport that exists in Somalia.

At the beginning of the trial, the accused were heard.

Abdurahman Ali Samatar: "There were people on land who organized the guard duty shifts. I asked if I could participate, and I was turned down."⁷⁸ A few days later, I

⁷⁸ It was later learned that one member of his family was already part of the operation, so this refusal was a question of shares and the equitable distribution of work, along with the profits that could follow therefrom. In the judicial order that sent him back to the

took my spot in the vehicle with my brother to get home. I didn't take part in the boarding or confining of hostages. I never touched a weapon nor a cent of the ransom. For four days, I was handcuffed and pushed around a military ship and interrogated by police. I am innocent and for four years I've been deprived of my liberty. Every time I see a judge, I believe he will free me."

Ismaël Ali Samatar (his brother): "I will be very brief. Greetings to the court, the members of the jury, and everyone here. I understand what it is we are accused of. I will answer any questions later. As for myself, I have acknowledged what I have done and will answer for it all. I ask for pardon from the people who were on the boat and their families."

Daher Gullet Saïd: "Greetings to the court. I will be brief. I was raised in Somalia. I understand that I am accused of an act of piracy. I did not take part in the boarding but did in the confinement of hostages. I have told the examining magistrate what I have done. I am not a pirate. That is all."

Abdelkader Gullet Saïd: "I am Somali, I am a fisherman and did not take part in the boarding. I work as a fisherman and, if not fishing, I stayed on land. I saw people who were going to another town and, among those people, there was someone I knew. In the car he entrusted me with some money.⁷⁹ We were arrested,

criminal court, this "confession" of intent (though the act was not committed) would be used against Abdurahmen. This order advances in effect that in "admitting to have offered his services guarding hostages, he associated with a group he knew had criminal aims."

⁷⁹ Throughout the investigation, Ismaël Ali Samatar would claim that Abdulkader Gullet Saïd had not participated in the operation and that he had entrusted him with a part of the ransom money

I was handcuffed for four days and after that I was taken to France. I had no part in this act of piracy.”

Abdullahi Youssouf Hersi (chauffeur of the taxi whose participation in the hostage-taking on the Ponant is denied by all the others): “On the eighth day of the fourth month of that year, I was driving a vehicle that broke down. Another vehicle picked me up, and that is how I arrived in that town (Garahad). There, I found another vehicle to drive, then there was a military intervention. I was stomped on by the officer who interrogated me. I was handcuffed for the four days that followed. Now I have been in prison for four years, I am not a pirate. Why so much injustice for so many years? I am very happy to find myself before this court, I have wanted to prove my innocence for a long time. I have not had any news from my family for these four years. In 2007, I was married and after my arrest my spouse requested a divorce. Thank you for listening.”

When the Ponant was intercepted by pirates, only the thirty-member crew was on board. They pressed civil charges against the hostage-takers who, (as the commander of the three-masted sailing ship Patrick Marchesseau, would say) burst onto the ship while all personnel were relaxing around a barbeque. The morning before the trial, one of their lawyers vented at length in front of several journalists about his traumatized clients, some of whom suffered such trauma that they couldn't return to sea. No doubt these employees, whose primary role was to serve as flunkies for the fantastically wealthy tourists, experienced the days of being held captive with great fear – there's no during the trip back to their village, because the roads are not safe in Somalia... The ransom had at that point already been divided up.

denying that—but they could also have more directly gone after their boss. Because it is of course he who sent them to escort a luxury liner in one of the poorest zones of the world⁸⁰ just to save a bit on fuel⁸¹ ...

The hearing also brought out that their employer, the owner of the *Ponant* (namely the group CMA-CGM, the top ship owner in France and the third worldwide), before consenting to transfer the sum of 2.15 million dollars, continuously haggled over the sum demanded by the pirates—at the risk, we are told, of dangerously upsetting them... Several employees complained as well that they did not receive special psychological attention after their misadventure. In fact it became clear that the civil parties were not only there to get even with their kidnappers, though that was a quite real part of their involvement; this trial was also the occasion to obtain compensatory indemnities.

Among the people working on the *Ponant*, the question kept coming up over five Filipino sailors, figures of the maritime underclass.⁸² It was announced

80 Class struggle—or any other hint of political awareness that would give them the slightest sense of belonging to the exploited masses—hardly seemed to inspire the crew of the *Ponant*: six months after the trial, they put out a petition of racist and chauvinistic stench demanding that the pirates be more harshly punished and thrown out of France at the end of their sentences.

81 It would be stated, during the trial, that to make the trip around Africa is costly in fuel and that is why the *Ponant* took the notoriously riskier maritime route.

82 While a French sailor earns an average of 1,650 euros per month for eight hours of work per day, his Filipino colleague earns 1,400 euros per month, without paid vacation and with very little social protection, for twelve to fourteen daily hours of labor. Out of the 1.8 million sailors in the world, four-fifths come from the poorest countries (source: *L'Humanité*, January 24th, 2012).

that a videoconference was to take place with them.⁸³ Friction between members of the crew also came to light, some of them blaming the others. Notably a Filipino employee who we unfortunately could not hear, had sympathized with the hostage-takers while playing chess with them...

The employer, one of the most powerful ship owners on the planet, also had a lawyer. His aim was to avoid being blamed for possible faults or negligence towards his staff, thusly avoiding having to pay them indemnities or other damages... The hot-shot lawyer who defended this noble himself had a prestigious and media-friendly presentation: one Mr. Metzner, the omnipresent defender of the "greats" of this world when their depravities land them in a courtroom (Bouygues, Jean-Marie Messier, de Villepin, Continental Airlines, the UMP, the PS).

The first day of trial, we learn that during the seven days they were detained, the thirty members of the crew ate two meals a day, took showers, slept in comfortable places, and played cards and board games. Just before this account of life on board the ship during the hostage situation, we heard each of the six "pirates" recount their violent arrest on land after the transfer of the ransom, the continuous handcuffing they were subjected to for four days, their transfer from military ships to military bases, to France, to prison. It is then one starts to wonder, just to make trouble of course, what is more traumatizing: being

83 It's worth noting that this videoconference didn't happen at first because of technical difficulties. Then, it became very clear that the Filipinos were being fed responses. The masquerade, too obvious, was quickly cut short thanks to the magic of technology...

taken hostage by Somali pirates, or by the army and the French state? Even more in this case of these six Somalis, whose sequestration in French jails went on for four years.

After the civil parties' lawyers went on at length about the trauma the crew suffered – even if we know that this was part of the theatrical game of a lawyer who wanted to raise the stakes of the indemnities –, one almost ends up thinking that the Somalis must be less sensitive than the civil parties...

At least that's what one could believe listening to Patrick Marchesseau's testimony. Describing his role during the hostage situation, and his authority as commander vis-a-vis the pirates, he proudly stated: "They didn't bat an eye when they saw my uniform. That just strengthened my position." In fact, draped in his uniform and ornamented with his decorations that he displayed with pride, he spoke to us about pirates like inferior beings. His condescending testimony alternated between vindication and despondency: *"Their kind of like little boys, they play with walkie-talkies, then they leave them lying around when they're finished playing [...], the girls were well treated [...], the operation had an amateur feel [...]. They are sea bandits, moderate Islamists, not terrorists [...]. They are binary: either very calm or very excited... and that's when the worst can happen."*

The prosecuting attorney shook his head with compassion, but in the end nobody noted, even among the defense, that in fact the worst did not happen... unless you're talking about what happened to the pirates. Because when a death is brought up during the hearing, it was of a Somali who was thrown off balance by the gusts of an anti-pirate alliance helicop-

ter as it tried to board the Ponant.

When the question of life on board came up, the commander took on a despondent air. He went on at length about the small bottles of alcohol the pirates drank, and with an indignant tone he brought up the custom Ponant clothing (the staff's work attire), that was all taken and could have "easily clothed an entire Somali village."

Though he recognized three "pirates" during the investigation, Commander Marchesseau no longer recognized them during the hearing, explaining that they looked like they had put on some weight. To justify this, he told the bar: "They look puffier than they were then. [...] The Somali who lives in Somalia looks totally different than the one who's spent four years in French prison."⁸⁴ All acknowledged this remark was warranted... Nobody really knew, anyway, whether it was more revealing of malnutrition in Somalia or the sedatives administered by force to, or without the knowledge of, prisoners in France.⁸⁵

Over the course of the afternoon, the judge

84 During the witness confrontations, the team was asked to identify, among the accused, who was on board the Ponant. Several of the team members remarked that they had put on weight... We have no idea what conclusions they drew from this...

85 Several of the defendants suffer from health problems and psychological issues since their arrest and detention. During hearings with the examining magistrate, most of them complained about the conditions of their detention and their isolation. During one hearing, one of the defendants fainted. Another, released from prison after the trial, suffers today from prison psychosis from which he will surely never recover. In the previous trial that took place in France (the Carré d'As affair, in November 2011), one of the defendants also suffered from prison psychosis which caused him to lose all grip on reality. His story is mentioned in the partial summary of the Carré d'As appeal trial, pages 112-115.

asked several seemingly banal questions about fishing and the life of the accused. When one hesitated to answer, he reassured him, claiming to want to understand life over there, in Somalia, that here is hard to imagine... The answers to his questions were then utilized by the prosecuting attorney who, decked out in his ermine robe, continuously tried to corner the defendants: *"Wait, your fishing net, you were going to leave it? [...] But, just a minute ago you said that fishing season should last until May but, now it's April and you're going back already?"* ... He resorted to low blows to present the "pirates" in an unfavorable light. For example, after one of the defendants asked to change interpreters,⁸⁶ the prosecuting attorney insinuated that it was because he didn't want a woman to translate—out of misogyny. When it is known that three quarters of the seventeen jurists in this trial are women, and that earlier that morning the same prosecuting attorney had revoked most of the men who had come up in the draw (without a doubt, in his mind, the women jurists would be less likely to have sympathy for these men coming from a Muslim country), it would lead one to believe that he was seeking to depict the defendants as sexist, and leaving no uncertainty.

So, thanks to the defense lawyers, we learn that over the course of the investigation, and notably during pre-trial custody, there were serious translation problems and that the interpreter, elected at the other's expense, knew the "pirates" from already having

86 On this note, we could tell from the audience that this interpreter, in contrast to the one elected by the accused, did not translate everything, but only the questions that were posed, which, obviously would handicap the defendants' ability to understand their trial.

worked during the proceedings, and it's for that reason alone they entrusted him – he was in effect crucial for the defendants who don't speak French.

During this first day of trial, the problems faced by men and women who live in Somalia, or rather survive there, were only brought up in passing. Sure, that's not why these six suspected pirates had to appear but of course rather to serve as an example, to send a strong message to other pirates, as the prosecuting attorney⁸⁷ remarked numerous times. We would learn, however, that, if everything goes well, a Somali fisherman would earn \$50-100 per month. This amount was often compared to the \$37,000 earned by the only defendants who admitted to having participated in the boarding of the *Ponant*.⁸⁸ This lean salary could also be compared to the price of taking a cruise on this ship, which by the way is in the neighborhood of 5,000 euros ... but let's not make any trouble. The fact that, for a few years, there have been fewer and fewer fish along the Somali coast would be mentioned in passing by one of the defendants – the one who, during the investigation, admitted to have voluntarily offered to take part in the operation in order to make a little money, but had not been able to since one of his family members was already involved.

The issue of rich countries appropriating the Indian Ocean – those countries that built military ships

87 Which for that matter seemed completely ridiculous when one imagines the daily life of a Somali. As if one heavy penal sanction, pronounced thousands of miles away from their country, could influence the decisions of people who constantly feel like they're hanging on by a thread, and who live in extreme poverty.

88 During the investigation and the trial, Ismaël Ali Samatar stated that it was hunger that pushed him to accept the job.

to monitor the region and to parcel out the fisheries (where French, Spanish, and other countries' tuna ships are raking in the dough), not leaving a single fish to the traditional fishermen of the region—was not broached during this hearing. The same goes for the dumping of barrels of radioactive waste in these waters, which regularly wash up on Somali beaches and poison the population. It would however be explored during the trial, in the defendants' statements, and also when, eight days later, on Wednesday May 30th, a university specialist of this region of the world and a journalist investigating nuclear waste came to testify in defense of the pirates.

The pirate Charles Bellamy gave a speech in 1720 to the captain of a merchant vessel that captures the whole sense of this first day: *Tho', damn ye, you are a sneaking Puppy, and so are all those who will submit to be governed by Laws which rich Men have made for their own Security, for the cowardly Whelps have not the Courage otherwise to defend what they get by their Knavery; but damn ye altogether: Damn them for a Pack of crafty Rascals, and you, who serve them, for a Parcel of hen-hearted Numskuls. They vilify us, the Scoundrels do, when there is only this Difference, they rob the Poor under the Cover of Law, forsooth, and we plunder the Rich under the Protection of our own Courage.*⁸⁹

In our times, one might put it this way: "There are two types of pirates: those who attack ships and those who

89 Tr—The French translation of Bellamy's speech excerpted in the original version of this book was rather colorless; the original English version is used here (readers are highly encouraged to seek out the full speech elsewhere).

empty the oceans of fish and dump toxic waste.” With these words, Ali, member of the Hobyo Council, a village considered to be the capital of Somali piracy, concluded Paul Moreira’s documentary *Toxic Somalia*,⁹⁰ which was considered at length during the May 30th hearing.



Wednesday, May 23rd Hearing

That morning, Madame Caballero—special representative charged with the international coordination of the fight against maritime piracy at the port of Orsay—gave testimony. Not being a specialist on Somalia and never having set foot there, she was satisfied to describe the country in the style of the *Petite Larousse* or Wikipedia, repeating the main themes of Lang’s report to the UN. She spoke of “allegations and presumptions” regarding illicit fishing and toxic waste, claiming that there is no proof. For her, it’s up to Somalia to make any efforts to regulate these problems—by surveying the coast, by preventing warlords from selling fishing rights, and by getting clear information on dumping, for example, because at present no one knows anything. Her presentation of the situation continually contradicted itself about the ineffectiveness, or nonexistence, of Somali authorities, vs. the attentiveness of these same authorities, who she describes as cooperative, giving green lights for

90 This report, released in 2011 on Arte is available on the internet and was played during the Carré d’As trial, which took place in November 2011 and during which six Somalis, arrested by the French army to be tried in France, appeared before the court for acts of piracy.

French military interventions on Somali soil. Yet she makes it clear that there is no French representation in Somali. Evoking the reconstruction of a Somali court for the benefit of international interests, she proudly announces that an antipiracy law is ready (even if the parliamentary assembly does not yet exist), that the prisons had been renovated or are under construction—all in clarifying that only the law students still in university can be counted on to rebuild the Somali judicial apparatus. Madame Caballero drove home that the trial and the penal sanctions are necessary, if only to justify the military naval operations.

The prosecuting attorney assured her, no joke, that there's no hint of colonialism in this story: the interventions of military powers are carried out in full accord with these famous authorities—those that, when it is convenient for France and the public prosecutor, don't seem so elusive after all. The lawyers underlined that an accused pirate was acquitted during the previous trial—that of Carré d'As—after having been deported to foreign soil and deprived of his freedom for three and a half years ... During the hearing, it was made clear that there have been life sentences in the US and Russia, death sentences in Yemen, and that one hundred fifty pirates were incarcerated in India.

That afternoon, another specialist was invited to the trial: a naval officer, Marc-Antoine de Saint-Germain, a frigate captain on the *Atalante* mission. At the beginning of the hearing, one of the defendants did not stand to welcome the court, which upset the gendarmes.

Marc-Antoine de Saint-Germain explained that he was a context witness and not a witness of acts, given that in 2008 he did not work for the minister of the

Défense in any capacity. He thus appeared before the tribunal to testify to what piracy is today and to give a short history of the measures taken by the international community in the face of this plague. Some of his superiors and colleagues were prominently present in the room for his presentation (good thing the author of the present account didn't commit a violation in front of these short-haired guys with beards, with their attachés and impeccably-pressed suits ...)

In any case, the frigate captain is there to elaborate the army's official position. From his very structured presentation (gotta love that military discipline!) he trotted out the familiar three causes for Somali piracy: the absence of a strong state in Somalia, the poverty in which the population was plunged, and the opportune location of the region. In 2011, the specialists estimated that five thousand people lived on piracy and counted one hundred ten pirate camps along 3,000 km of coastline. Today (in 2012), there are only forty camps left and far fewer pirate attacks thanks to the actions of the international community and the three principal military coalitions (the EU, NATO, USA). In addition to the fifteen ships of these three coalitions, other independent military ships patrol the sea lanes, and merchant vessels have learned, according to Saint-Germain, to protect themselves from pirate attacks.

Also according to Saint-Germain, if the pirates' success rate is dropping and if six hundred fifty pirates have been detained, they are also seeing, unfortunately, increasing violence on the part of the pirates. He cites a problem in consumption of khat, the psychotropic drug widely used in the region, and describes piracy as a well-structured criminal organization.

piracy trials on french soil

tion, well-organize and very violent. He cites, without backing up his facts, collusion with the big bad wolf, Islamist militants.

Throughout this briefing, the defendants talked a lot amongst themselves, and were repeatedly called to order. When the judge asked him if the international community's intervention only aimed to eradicate piracy or whether it also intended to restore a legitimate state in Somalia, the captain answered that, in the months to follow, the European mission would also be working on land. Continuing his briefing, he indicated that that neighboring countries also viewed piracy as a plague, that Djibouti served as a relay base for military operations, and that the local populations did not support piracy because it gives them a bad name ... The population of the poorest country in the world is worried about its image in the international media! Nobody stopped to remark on the absurdity of this claim...

The prosecuting attorney revisited the three phenomena mentioned as explanations for piracy—the absence of a State, poverty, and the geography of the area—and asked the captain if there was anything to the “rumors” of toxic waste dumping and illicit fishing as motivation for the pirates. Marc-Antoine de Saint-Germain answered, without batting an eye, that he has never heard a word about toxic waste dumping along the Somali coast and so he could not speak to that subject. As for fishing, he knows that there is a lot, but could not say whether it was licit or illicit. He said without hesitation that the fishermen of coastal countries fish under the protection of the good guys.

To the prosecuting attorney, who insisted on this question of waste dumping and cited a UN report

that concluded that nothing had been firmly established and that it was not possible to correlate a possible drop in the fisheries to the presence of possible waste in the sea floor, the officer reaffirmed that he had never heard anything about this issue (how fortunate for him that he could be informed by coming to court!), but that, whatever the case might be, all the sailors working on ships in this zone said that there have been a lot of fish and that the fisheries had been abundant.

The afternoon proceeded calmly: the prosecuting attorney showed his enthusiasm for the international military response—the development of which (the possibility to intervene on land) was described in hackneyed phrases.

The problem of the weak rate of intercepted pirates who are then brought to justice was then evoked: many arrests, but not enough are brought to trial! There was praise for the US process for arrested pirates—sending them to an American court, which, according to the admiring prosecuting attorney, “has struck a chord” —while it is acknowledged that they only catch small fry and not the hijackers’ silent partners.

As the testimony went on, the prosecutor became more and more excited: the man in the ermine robe gets a vicarious taste of the thrill of intrigue, thanks to the man in the navy uniform. He strings together insinuations about mysterious silent partners in Malaysia, occult financial channels, and possible secret actions on land to neutralize the head pirates. In short, we’re fully in a spy novel—but as the defense lawyer remarked, all that has “nothing to do with the Ponant incident in 2008.”



May 30th, 2012 Hearing

On Wednesday, May 30th, 2012 journalist Paul Moreira comes to testify as a witness for the defense on the situation in Somalia and to speak to the toxic dumping and overfishing off the Somali coast. Among all those called to testify during the trial (and some of them were presented as specialists⁹¹), he was the only one who, once in his life, had set foot in the country. He stayed there for ten days to direct his report.

Paul Moreira stated beforehand that he had nothing to say regarding the Ponant affair itself, but that in 2009 he was able to travel to Mogadishu and to Hobyo—the village that at the time openly accepted that it survived on piracy. In Hobyo, a local warlord guaranteed his security. At the time he wanted to investigate the presence of toxic waste, which then was but a rumor. It seemed important to him that this aspect of Somali history also be understood.

During his on-site investigation, people plainly stated that this was one of the reasons for which they took up arms and began attacking large ships.

During his trip there, he managed to film a 2x2 meter barrel fitted with cargo hooks. He explains that in 2006 a German NGO⁹² had photographed forty

91 For example, on May 23rd, the inexperienced “specialist” Madame Caballero, whose testimony is discussed on pages 67-68 ... Asked about the presence of toxic waste in the waters near the Somali coast, she cautiously responded “I saw Toxic Somalia, like you...”

92 See the article (in English) on the report made by the NGO Basel Action Network (ban.org) and the reports released by experts from the UN Environment Programme (UNEP). In the UNEP report from the beginning of 2005 entitled *After the Tsunami: Rapid Environmental Report*

identical barrels into which no official organization has investigated. There was polystyrene inside the barrel he saw, which in general indicates the presence of dangerous material.

He also went to the pediatric ward in the hospital in Mogadishu. There, he saw an epidemic of urogenital defects in children. For the doctors on site, there was no doubt about the correlation between these defects and the toxic waste. The dumping of this waste along the Somali coast was the object of investigations carried out by the Italian government but, despite a lot of evidence, none led to charges.

Mr. Moreira explained to the court that he thought it was fitting for the pirates to be judged in court today, but that it would also be fitting that the polluter be judged as well. After these preliminary comments, which set the scope of the testimony, Mr. Moreira was questioned by the judges and defense lawyers.

The judge: Have you been able to find a link between the toxic waste and the rise of piracy?

P.M.: The link is clear to the elders in Hobyo. They told me: "We are in a country without a State to protect us. There are people from where you live who come to

it is indicated that the tsunami had also provoked serious pollution on the Somali coast: *"The impact of the tsunami stirred up hazardous waste deposits on the beaches around North Hobyo (South Mudug) and Warsheik (North of Benadir). Contamination from the waste deposits has thus caused health and environmental problems to the surrounding local fishing communities including contamination of groundwater. Many people in these towns have complained of unusual health problems as a result of the tsunami winds blowing toward inland villages. The health problems include acute respiratory infections, dry heavy coughing and mouth bleeding, abdominal haemorrhages, unusual skin chemical reactions, and sudden death after inhaling toxic materials."*

dump poison, so we take up arms.” They aren’t idiots on a downward spiral of banditry, but, at the beginning, they were self-defense militias. I heard this justification from several Somalis. I held a two-hour long interview with the council of elders, they seemed completely sincere to me.

The judge then went back to the testimony from Port of Orsay pirate specialist, Madame Caballero, who had come to testify on May 23rd, claiming that it was impossible to establish a link between piracy and the dumping of toxic waste because this piracy had begun before the pollution.⁹³

93 Contrary to what Madame Caballero claimed, it clearly seems that between 2005 and 2010 the acts of piracy grew. At least that is what is indicated in the journal *Partenaires sécurité défense* n°267, in which, incidentally, she was interviewed. According to a map printed in the magazine, the number of attacks rose from forty-six in 2005 (the year barrels were found washed up on Somali beaches) to two hundred twelve in 2010. Moreover, everyone agrees that acts of piracy in Somalia began to rise at the very beginning of the 2000s ... Yet, it was at the beginning of the 1990s that Somalis complained of overfishing by foreign ships taking all the fish from their waters. The dumping of toxic waste there had begun in the 1980s but increased in the 1990s.

This specialist’s remarks contradict what other experts say. For example, Admiral Laurent Mérer, author of the book *Moi, Osmane pirate de Somalie* (Koutoubia, 2009), but also former commander of the Alindien, the French naval force in the Indian Ocean, explicitly ties piracy to the pollution of the Somali coast: “Broken containers containing industrial or medical wastes, chemical or pharmaceutical products, mercury, cadmium, uranium, wash up on shore, pouring their sinister contents before the villages. For twenty years, many corporations, in spite of international conventions, store their dregs near the Somali coast. It costs them less than a fifth of the processing fee in a facility, and the chaos in Somalia guarantees their impunity. All this does not excuse the piracy, but is part of the context that must be grasped in order to comprehend the situation and solve it. In effect, it

He also spoke to the problem of the redrawing of fishing zones and asked the witness: "Is that having any effect there?"

P.M.: The part of Somalia controlled by the state was, at the time when I went, a 7km by 300m strip, so the Somali state is a fiction. Only portable telephones work well in Somalia. Even today we are in touch with people there who see toxic barrels still washing up on shore. It's the same thing in Haiti. Toxic waste traffickers look for countries without a state. It's the grey zone of globalization.

Civil case lawyer: You see a line between the toxic waste and piracy. Does this justify the actions of the pirates? Could not antipollution associations prevent these ships from coming in and dumping their waste without violence?

P.M.: The acts you describe are theft, but the Somalis believe that crimes have been committed in their territory that justify the taking of hostages. The fishermen say that their children are deformed, and that this crime supplants the others.

The civil case lawyer notes that the Ponant has nothing to do with the ships that dump toxic waste and asks whether the pirates' objective is money.

The prosecuting attorney then speaks: France should assist Somalia, you agree. In punishing guilty Somali pirates, do you agree with me that we are helping the Somali state?

P.M.: I don't know ... We could help the hospitals, the Somali children ...

is out of these fertile grounds that the phenomenon grew." (interview from January 25th, 2010 at the book release at Thénac in Charante-Maritime, available at nicolebertin.blogspot.fr).

Prosecuting Attorney: I cannot concern myself with every misfortune in the world. I am concerned with piracy!

Defense attorney: Are people dying of hunger in Somalia?

P.M.: I have gone to many poor countries, but in Somalia the poverty is awful. Some people are so thin you would say they were shadows.

Questions then regarding Hobyo and how pirates operate.

P.M.: In Hobyo, there is a shanty town on the coast ... The huge amount of money benefits the silent partners, who are overseas. There are strict rules on dividing the spoils: half for the investor, then the rest is portioned out between the village and the pirates in a standardized way. By pirates, we mean the entire operating system of piracy. What is clear is that the money does not go solely to the hostage takers.

Another defense attorney asks the witness to describe the pediatric ward in the Mogadishu hospital.

P.M.: In this hospital, there is nothing for treating children. They watch them die ... To treat adults, there is an NGO from Qatar which has a single surgeon, an Iraqi. There is no other place to get treatment.⁹⁴

94 See the more specific statement from Paul Moreira on Somali hospitals and the defects suffered by the children there, as well as about toxic waste, on his blog (premiereslignes.blogs.nouvelobs.com); here is an excerpt: "June 12th, 2010: Deformed children in Somalia—I just returned from Somalia. Mogadishu is totally abandoned. At the hospital in Madina, I saw an Iraqi doctor, head of emergency surgery, who had to give a liter of his own blood to save someone. No blood bank in the main hospital of a country at war. Then, I saw an inexplicable wave of deformed children. Always the same deformity: urogenital system. No urinary canal. The director of the hospital had no explanation. She has seen these deformations triple in ten years."

Defense attorney: Last week, Madame Caballero, presented as a specialist on Somalia, told us there were hospitals there.

P.M.: It is difficult to know something if one hasn't been there.

Defense attorney: Did you see a university while you were there?

P.M. laughs.

Defense attorney: Yes, that makes you laugh but last week that's what Madame Caballero told us. She also said that the Somalis were business-minded and that the Somali economy was prosperous.

P.M.: She would have to go there, all the same. For me, Somalia is the Raft of the Medusa. Things are going terribly there.

At one point, the prosecutor implied that Paul Moreira, in his reporting, could be spreading rumors, since he based his investigation on a rumor from a German NGO.⁹⁵ Master Pradel, defense attorney, then asked him if it was all a matter of rumors or reality.

When the journalist began to speak about what he had

But only in her hospital, for there is no way to get national statistics.

"The parents, often very poor, say: It's Allah's will. But the slightly more educated Somalis suspect an environmental cause. They talk about toxic waste dumped by Westerners. The toxic waste can be mutagenic. Giant barrels have been found on the Somali coast. Dumped by whom? No label. The only NGO that has taken an interest in it had two of its team members die. So they abandoned it. Nothing like a country at war for emptying your trash can."

95 It is too bad that nobody snapped back at the prosecutor that the UN had also spread rumors, since the UNEP itself gave an unambiguous account in its reports on the dumping and washing up of toxic waste on the Somali coast. See the chapter on this topic (already cited in note 91) on Somalia in the UNEP report entitled "After the Tsunami: Rapid Environmental Report."

seen, the prosecutor aggressively cut him off: "You saw a barrel, but you don't know what was inside of it."

P.M.: About that barrel, I asked the German expert who had led the first investigation, which provided us with photos of forty or so barrels. These sealed barrels corresponded to those used for toxic waste. Agricultural chemicals often cause urogenital deformations, like those I saw in Mogadishu.

Defense attorney: Madame Caballero said that in Somalia, since there are no regulations, there is no illegal fishing.⁹⁶ What can you say to that?

P.M.: From the bottom all the way to the top in Somalia, they denounce overfishing.

Defense attorney: The drop in fish penalizes the coastal fishermen. Could one call piracy a way of making do?

P.M.: Yes. One day someone's a fisherman, the next a chauffeur ... The western schema cannot be tacked onto this system.



During four years of investigation into the hijacking of the Ponant, some of the accused also refused to answer the investigator, arguing that they had been abducted and taken away by force to a country where they had committed no crime.

That was the case, for example, for Ismaël Ali Samatar during the hearing on 25 November, 2008 ...

⁹⁶ Ironically, this argument from Madame Caballero, who came back to say: "No law, no crime" had been put forward as a defense by one pirate during his trial in the Netherlands: "The attack on the ship took place in Somali territory; there is no law in Somalia, so I am not a criminal." (*Le Monde*, 20 May 2009).

Ismaël Ali Samatar's Lawyer:⁹⁷ Today I am defending the only one among the accused who has admitted his responsibility from A to Z. In my mind few things justify the taking of hostages but, in Somalia, carrying a weapon is normal. There are 20 million guns for a population of 9 million. In Somalia, is it possible that there is a different relationship to thievery/banditry than in Europe? Is having a Kalachnikov necessarily a sign of criminality and organized crime?

P.M.: Every Somali has at least one gun. It's very easy to get one. Actually using one is of course easier when you live in a country of war and violence like Somalia. Everything happens at the end of a gun. I know that toxic waste trafficking goes hand in hand with weapons trafficking. That's what Ilaria Alpi's investigation sought to illustrate—before he was assassinated. There was a deal in 1991-1992: get rid of this trash for us, we will bring you guns.⁹⁸

97 This lawyer, whose personal views on the acts committed by his client seemed unfavorable to Ismaël's cause, claimed upon hearing the sentence of Ismaël to seven years in prison, "The punishment is measured in view of the charges [...] I think that the sentence was correctly rendered."

98 In *Toxic Somalia*, Paul Moreira interviewed the reformed mafioso Gianpaolo Sebri. On this subject, one can also read the article in *Bakchich* at <http://www.bakchich..herokuapp.com/international/2009/09/23/poubelle-la-vie-de-l-italie-a-la-somalie-56120>. The spokesperson for the UNEP, Nick Nuttall, declared: "*Somalia has been used as a dumping ground for hazardous waste starting in the early 1990s and continuing through the civil war there. European companies found it to be very cheap to get rid of waste, costing as little as \$2.50 a tonne, where waste disposal costs in Europe are something like \$1,000 a tonne.*"

The Carré d'As Appeal Trial

That first day of the trial on January 22, 2013 was dedicated to the case of one of the pirates incarcerated at Fleury. Given an assessment in 2009, he had already been suffering from what some doctors call a "prison psychosis." The initial assessment recommended a return to his country as the only remedy, because "uprooting and imprisonment" brought on this sort of psychosis. Today, he is incapable of responding to such basic questions as "What country are you from? How old are you?..." At the beginning, he was treated with neuroleptics, but not anymore. Now he is in the clink like thousands of others, developing psychiatric problems without the screws caring for him, since he's a quiet detainee who only speaks Somalian. In 2009, however, he tried to set fire to his cell several times.

On January 22nd, like the others, he sat through another trial, unable to understand anything or respond, but the judge, with the head of the tribunal, insisted he be there. The judge demanded an immediate evaluation between 1 PM and 3:30. On the stand, the psychiatric expert only confirmed his colleague's 2009 report. To the question, "Do you know what you are doing in prison?," he responded "When a stone falls, you can find it there where it fell." To the question, "What is the meaning of this trial?," no response... Anyway who could lucidly answer this question? Understanding neither the meaning nor the reasons for his incarceration, nor the punishment, he thought he was in a "hotel room with a strange door that only opened and closed from the outside."

The psychiatric expert diagnosed a "chronic progressive psychosis," suggesting that he go to

Fleury-Mérogis for treatment (not knowing that this prison only has a simple medical-psychological center, not equipped to deal with mental problems). He finished by suggesting as a solution: *"Two months of neuroleptics and this patient's condition will improve. [...] which is not necessarily incompatible with detention but, since he is not posing a problem, he can stay there."* Going to the trouble of having a translator present for medical issues was barely an afterthought.

The lawyer then requested the immediate release of his client and a disjunction (to delay his appeal). She plead penal irresponsibility, a psychological state incompatible with taking part in the proceedings. The prosecutor responded that "in his personal opinion" he understood that "the criminal court is not a firing squad" but that he has "orders from the prosecutor's office" (another lawyer mentions the "smart bayonet"⁹⁹ law to remind him of what happens to soldiers who refuse to carry out orders), that there is "no urgency" and that this seemed like a "release based on emotion."

Eighteen hours later, the final decision would be a "disjunction with a new expert" and denial of release for "a lack of guarantee of representation" (the established phrase), but "Fleury would be kept up to speed" about the sick man in their facility and that he would need treatment.

The trial could thus begin the next day, a bit later, because for the others, who were declared to be of sound mind but no more equipped to understand the meaning of this sordid scene, it should go quickly. The trial would be completed by February 1st, a week

99 Tr—Baïonnette intelligente is a French penal code holding soldiers responsible for carrying out manifestly illegal orders.

before the initial estimate.

January 22nd, the day for “listening” to the defendants
Surreal questions were posed, beginning with statements made under military pressure and with uncertain translations during the imprisonment by the French army that lasted almost a week. The latter is now hiding behind state secrecy. This, while apparently—to the great displeasure of the judges—the accused all went back on their initial statements, which seemed too precise to be credible. What then ensued was a mix of names: first of clans and sub-clans (when the judges asked: “Are you part of a clan?,” it seemed the intent was more to place the defendants in mafia-like organized groups rather than to understand social organization), then of villages, ports... At a criminal court in Seine-et-Marne—a thousand miles away from Somali reality.

In Puntland, the contacts between the operation managers and the fishermen of the area—often very far away from their family—are made in cheap restaurants at the ports. The attack of the Carré d’As by two skiffs (one of which broke down) that left from a “mother-ship,” a fishing boat on which was written “www.childrenoftheworld”... In other words this was a boat, like so many others, given to the fishermen by humanitarians. The judge expressed his outrage that a boat given by the good fairies from the west, intended to be used for fishing, was used to commit piracy. Still, these men, most of whom are fishermen, have to feed their families somehow. One of the fishermen who became a pirate by chance had been offered \$500 for this operation, as a payment independent of the ransom.

On good fishing days, he earns between \$1 and \$1.50 per day ... In the end though, he never saw a dime of the money he was promised, which he had demanded immediately. He has six children; his wife, sick and exhausted by hunger at the time, died in 2010 while he was in prison in France. It was he who at the first hearing, shocked the judges and the prosecutor saying: "I was a hostage like the French couple." What he meant by that was, in fact, that he found himself trapped between the French navy and the heads or commander-negotiators of the operation.

On board the ships, there was a sort of "mutiny" of the men against the order to take the two hostages to shore: they thought it was too risky, that things were not organized enough on land from a logistical point of view (not enough food...) and that they could quickly be dispossessed of their captives by bosses who had stayed on land. Moreover, they had been kept out of ransom negotiations (between 1.5 and 2 million dollars demanded from the French government). Being subordinates and not decision-makers, still they collectively decided to stay at sea. *"We didn't want to go to the desert. On the Carré d'As there was no boss, no one led, we got by on our own. Had we stopped at port, we'd have asked for advice from the Elders."* They continued to travel, though a storm made it difficult and they had to exchange the Carré d'As' outboard motor for four hundred liters of gas with some fishermen...

"We are not terrorists, we are kidnappers," one of the first pirates to board the boat declared to the skippers. The two hostages, old sailor types, were fairly understanding. At the end of the first trial, they came and shook hands with the accused — one of them piracy trials on french soil

declared that he was still “sorry for them, he was old enough to be their parent.” The judge, questioning them about their relation to Islam, had asked one of the pirates why he did not practice Ramadan during that period of the year. He responded that it was not necessary, that he already knew that he was “in sin” by practicing piracy.

The “promenade” lasted an afternoon, one night and one morning. The pirates learned from a BBC news flash that the French navy was after them. After the assault, a fisherman – who, with difficulty because of the storm, had been picked up out of maritime solidarity on the boat taken by the pirates – found himself in the nets of the French navy (which doesn’t bother with details). In the hours that followed, the soldiers knew very well that he was a fisherman with nothing to do with the matter, but so as not to lose face, they took him along with the others. Though he appeared in court as a free man, this fisherman did four years in prison. Living in a house in Nanterre, he requested asylum like the others. He is like many men from the south of Somalia who don’t hesitate to leave their families to escape the war and famine to try their chances at fishing, twelve hundred miles north in Puntland. On this expedition, during the French navy’s assault, a pirate, who is never spoken of, was killed at sea.

Finally, the judge systematically asked each of them: “What role did the others play?” They each responded in turn: “I will only answer questions concerning my participation. He is present in the room, you have to ask him.” Maritime solidarity on land.

Interview with Yusuf Mohamed Ahmed

Yusuf Mohamed Ahmed is one of these terrible Somali pirates that our valiant soldiers, braving all peril, captured while they were freeing the hostages from the Carré d'As. This underling made the terrible mistake of being in the wrong place at the wrong time. Here is his testimony, taken from the authors of this book.

My name is Yusuf Mohamed Ahmed, I was convicted in 2011 for my participation in the taking of hostages on a French sailboat, the Carré d'As, in the Gulf of Aden in September 2008. I am twenty-two years old now, in 2008 I was a minor to the French court. The French government decided that with my companions I had not been punished enough, so they retried me at the beginning of 2013 on appeal in Melun, far from Paris. But my punishment was sustained, like those of the others.

I am a Somali from Allula, in the north of the country, at the tip of the Horn of Africa. I first worked as a server in my mother's little tea bar. My mother was struck with a serious mental problem. I married at fourteen, my future wife went to help my mother. I have three daughters. There is one who has been sick for a few months with nervous disorders and difficulty speaking, she was poisoned from eating fish. There are really a number of serious sicknesses on the coast tied to the dumping of toxic products in the Gulf of Aden.

How did you live in Allula?

I worked a little washing fishing boats when they returned from their trips at sea. I nearly lost my wife at sea as she was going to Bosaso, on a big ship, in 2004, when the tsunami hit. I went quickly to get her

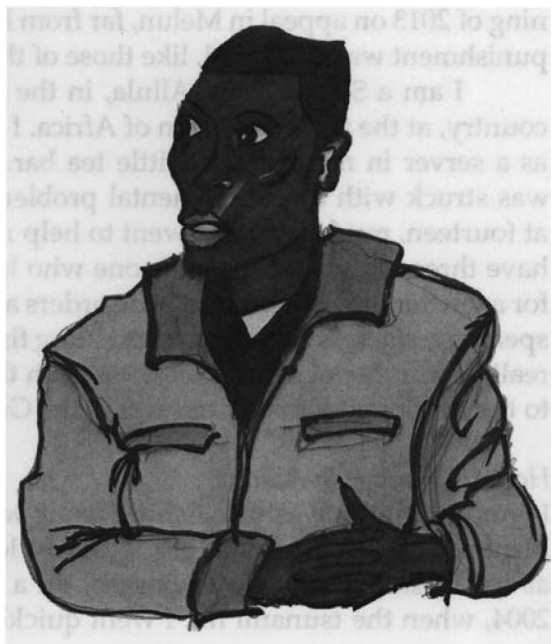
piracy trials on french soil

on a skiff before the sea went out completely, when you could no longer see it, before it came back in force. Just before people were trying to pick up the fish lying in the sand. The coast then got hit with a lot of trash. I'll remember that my whole life.

Can you tell us how you found yourself on the Carré d'As?

In 2008, I was almost hired on the boat where sailors taught me how to fish. Even if there weren't many fish and they didn't earn much, it was better than nothing for me.

Meanwhile, my wife got sick and I had to take care of her. I had to go into debt a little. Someone offered me a little job to earn a little money. I had to



go make food for a group of people in Habo, also on the Puntland coast, between Bosaso and Allula. That's how I found myself cooking for the team that had just made their assault on the Carré d'As.

I regularly asked to get a little money in advance, but they always refused. It never left the realm of promise — they promised me \$150. The boat left Habo for Ras Afun, I met up with them on land. I came on board to bring food and drinks. there was apparently a collective refusal from the team of pirates to follow orders from the bosses who wanted us to meet them with the hostages on land, in the desert mountains. The refusal had several reasons: the hostages were old and needed their medications, there would have been a problem supplying food... We were a little on our own, stuck between those on land who had promised us money, and the French navy that was following us.

The operation on board the Carré d'As lasted a half-day and one night. Around 4 am the French army launched an assault on the boat. I was just about to eat. There was an enormous explosion. They shot at us like crazy people and boarded the ship. One of our friends was killed and fell into the sea. Me, I hid inside the ship. Later there was a big helicopter over us. They arrested us, handcuffed us very tightly, and violently transported us to their ship. There was a soldier who said to us right away, in English that "with people like you, we shoot first and ask questions later" ... They also told us that we would be in prison for our whole lives.

We were transported to Djibouti. There, a high-ranking officer, presented as a general by the Djiboutian translator, told us that we would suffer for this our whole lives and if we had kids, they would suffer piracy trials on french soil

for it as well. That was a hard blow to us, we felt alone and weak up against someone very powerful. That was already before we got to France, because then they put us on a plane to this country.

Can you discuss your time in French prisons?

I was in prison at Fleury, Fresnes, and Santé. I was all alone, I didn't speak a word of French, I didn't know anybody. My first lawyer left me on my own for a year. I experienced violence from the little spats among the other prisoners. The others spent their time giving me condolences as if I were about to die. I spent the first year at Fleury without talking to a single person, without a single visit. I communicated by signing. I didn't go out to talk for fear of being beaten. The screws didn't understand anything, they thought I was fucking with them. When I *did* rebel, I got beaten.

Later, they sent me to the infirmary to inject me by force, which turned me into a vegetable, into an idiot. I thought that these injections were required, planned out. I received so many that I went crazy. I then spent six months in the psychiatric facility at Fresnes. Several times still they tried to stick me against my will. The screws were convinced that I was "francophone," as they said [i.e. that he was lying about not understanding them]. Then there was the trial, they put us in a glass cage with gendarmes behind us, we didn't understand all of what was being said. They realized that we had been manipulated during the first hearings. They wanted to make me out to be a "professional pirate," still armed, with lots of money... and they wanted us to admit that piracy was a crime.

And when you left prison?

In October 2012, when I was supposed to appear for the appeal, the prefecture from Essonne put out an “obligation to leave French territory” (OQTF). My new lawyers explained it to me, they had the text read to me, they wrote that I had to leave French territory, because I couldn’t “prove having normally entered French territory”, though I had arrived on a military plane, which landed at the Villacoublay base... And then I had stayed “in an irregular situation in France since my arrival in 2008” ... Being in prison this entire period, how could I have been in another situation?

Today, I have requested asylum in France: in Somalia, you risk your life every day. But I haven’t found lodging, I go from place to place, living with the help of a few sympathetic people. I can’t count much on the Somali community in Paris, it barely exists, there can’t be more than thirty people who, for the most part, are in the same mess with papers and a place to live as I am.

(7 March 2013)

The Tanit Trial

The third Somali pirate trial on French soil took place at the Rennes criminal court from October 14th-18th, 2013. It concerned three men—Mohammed Mahamoud, Abdelkader Osmane Ali, and Mahamoud Abdi Mohamed—arrested a little more than four years earlier. These three were part of a group of five pirates lost on a boat at sea, without gas, with a dead GPS telephone, following the failed assault of an Israeli cargo ship. When the Tanit, a twelve-meter French sailboat, crossed their path, it was in a way their pass-piracy trials on french soil

port to life and they boarded it.

On the Tanit there were five people: a couple, Florent and Chloé Lemaçon, their little boy Colin, and two teammate friends who helped with navigation. Once the battery of their telephone was recharged, the pirates received the order from their commanders to bring the sailboat to the Somali coast in order to negotiate a ransom on land. The Lemaçon family had prepared for the eventuality of pirates more than they were for a military intervention, but the French government categorically insisted on a rescue attempt. This is 2009, when the French government wanted to be first in the world fight against piracy. On April 10, 2009, a week after taking control of the Tanit by Somali pirates, an assault was waged during which two of the five pirates are killed along with Florent Lemaçon.

It would take a year of bitter struggle by the father of Florent Lemaçon and by Chloé Lemaçon for the French state to semi-officially recognize that the bullet that killed Florent Lemaçon was French. This recognition was followed by the publication of Chloé Lemaçon's account of the events in her book *Le Voyage de Tanit*, from éditions Don Quichote in May 2010. On the eve of the book's release, the prosecutor from Rennes announced that "*the ballistic analysis ordered by the magistrate instructor has allowed us to establish that the bullet that caused the death of Florent Lemaçon was a shot from military origin.*" Which leads to the belief that this fact was known by Defense Minister Hervé Morin the very night of the military assault. But he preferred to let doubt linger for more than a year, claiming that it was a matter of letting the courts and the experts do their work... This same defense minister would how-

ever, the very night of the drama, serve up the Lemaçon family to the media and right-minded citizenry. He declared during a press conference that they were “daredevils” and insinuated that they hadn’t taken security recommendations into account for navigating this part of the world. “What is essential in our eyes is to find out the truth of Florent’s death and to clear his name”, said Mr. Colon de Franciosi, lawyer for the Lemaçon family and the Tanit crew. In effect, for the family, it was very important that the truth of Florent’s death be known and that the calumnies spread by the press, following declarations by Minister Hervé Morin, be erased.

Although a very important place was accorded to this aspect of the affair throughout the trial, the lies and the bad habits of the French state had little to do with what the three pirates were accused of. They were captured April 10th, 2009 and brought back to France, then tried for *“hijacking of a ship with violence or threat, abduction, kidnapping, holding or detention of several people committed as an organized gang”* and sentenced to life. But if the Lemaçon family hadn’t had the heart to bring the true facts to light, the three Somalis would have also been accused of murdering Florent. Still, even if the Lemaçon family (a civil party to the trial), had a lot to blame the state for, only the three pirates were charged and while they should have been at the center of the proceedings, they were relegated to a secondary role.

“I expect a lot from the trial,” said Ronan Ap-péré, the lawyer for Osmane Ali (one of the accused), on the first day of the hearing. The three Somalis must have as well. One wonders if they hoped for a punishment trials on french soil

ment that would have counted the years of detention they had already served or that would allow them to leave prison early. In any case, that was our hope, and when the verdict was pronounced (nine years of prison for each of the three accused), Appéré declared: "I am satisfied, it's fair, these are acceptable sentences for everyone," but we still had a bitter taste in our mouth.



Monday, October 14th: This poverty that doesn't justify everything

The opening day of the trial, Mohammed Mahamoud, Abdelkader Osmane Ali, and Mahamoud Abdi Mohamed were able to briefly describe their life in Somalia. Mohammed Mahamoud had the unique position of being free while appearing before the court in this trial, since he had obtained a conditional restoration of liberty a year before and had lived since in an Emmaüs¹⁰⁰ community. He came to the trial accompanied by friends, and one of them testified on his behalf.

The three men were typical examples of one of the aspects of piracy in Somalia, that was discussed in our first chapter. Indeed, the groups making the expeditions to practice piracy are often composed at once of nomads pushed toward the coast by famine, and fishermen who can no longer make it by fishing.

So, Mahamoud Abdi Mohamed is a nomad from the interior of the country, becoming head of the family in childhood upon the death of his father, who was a victim of a stray bullet. *"My mother was a*

100 Tr—A charitable organization in France

shepherdess, we were nomads, we lived in a tent, we travelled with the rain. I never married, because in Somalia, you don't get married if you have no money and no animals," he stated. In 2005, his flock was decimated by a great famine and he was then forced to leave for the sea to find a way to feed his younger brothers and sisters.

As for Mohammed Mahamoud and Abdelkader Osmane Ali, they were born near the coast and came from two very poor families. Abdelkader Osmane Ali, like Abdi, became responsible for his family upon the death of his father. He was twelve. After having worked several jobs to help his family survive, he became a fisherman at the age of sixteen and caught fish and lobsters that were sold to the UAE. When the UAE stopped buying from Somalia, he lost his only source of income.

As for Mohamed, he caught fish and lobster between Somalia and Yemen before losing his boat during the 2004 tsunami. Of his thirty brothers and sisters, eleven died of disease.

On the first day of the hearing, the extreme poverty of the three accused was so clear that nobody tried to deny it. In lieu of relativizing or bringing this poverty into doubt, the aim was to show that it in no way constituted an excuse. So, throughout the trial, we would hear prosecutor Brigitte Ernoul-Cabot or the civil lawyer, Colon de Franciosi, throw commonplaces our way like "I've known poor people, but they weren't pirates," "You needed money because you wanted to buy nice suits," "poverty doesn't justify everything," or better yet "all that falls under the motivation for fast and easy money earned in a perfect

banalization.”¹⁰¹ But what else can you expect from a prosecutor or a man who owns a castle and knocks around with the Rotary Club of Vannes? We would maintain, rather, the sad conclusion Mahamoud Abdi Mohamed made that day, after having described his fate in his country: “I had the bad luck of being born in Somalia. If I had been born in France, I would be someone else, I would be a doctor or a lawyer.”

Tuesday, October 15th: testimonies from the crew of the Tanit and Florent Lemaçon’s friends and family
Tuesday was spent on the testimonies of Chloé Lemaçon, her two friends who travelled with her on the Tanit and the family and friends of Florent.

Chloé Lemaçon began her testimony with a statement regarding the accused: “Even if my remarks are open to interpretation, I am here neither to defend them nor accuse them more than they already are.” The hardest words she said all along her testimony were in fact reserved for the army and those holding political power, who served Florent, her family, and her, up to the media, made them out to be reckless people who put in danger their son and the French soldiers charged with saving them.

She described the three men in the box as afraid, trying to save their own skins, and being under the command of Jaama and his second, Kadjé. She also recounts the circumstances of the latter’s death. The following is an eloquent statement on the relativity of the value given to life: “*When the assault began, Kadjé*

101 This more literally translates a French expression, and can be understood as “the acts of crime are becoming normalized in the region.”

did not get a bullet to the head as you said yesterday, your honor. He was struck with a bullet in his chest but then executed by a soldier on board the ship. Meaning that he was struck with a bullet in the thorax and was actually shot again in the boat. My teammates will recount this better than I, because it was they who saw it all. But, on the other hand, what I do know, and feel it important to say, is that while one could have at least tried to treat this pirate – in the same manner that they tried to do for Florent – they shot a bullet into his head.”

Unfortunately the two crew members who testified after Chloé did not bring up this point and the judge, so concerned with truth and the minutest detail, didn't pose a single question concerning the summary execution. A minor detail to be sure...

Besides Chloé Lemaçon and her two friends, several members of Florent's family and several of his friends came before the court. Amid all the testimonies, it was clear how important it was to them that Florent, discredited by the press in April 2009, no longer be considered a reckless person putting his son and the French army at risk. Unfortunately, a criminal court is the place where the gravest crimes and acts of our criminal code are judged and not the place where the truth about someone can be restored, smeared for reasons of the state and the honor of the army. And concretely, the persons being judged here are only the three Somali pirates, not the media nor political or military officials.

During the hearing, Chloé Lemaçon stated to the magistrate that she would do everything so that “the circumstances leading to the death” be removed from the main charge and not be imputed to the young piracy trials on french soil

pirates. When the judge told her that nevertheless her lawyer had made a request at the close of the investigation that the aggravating circumstances be retained, she responded: "there are several civil parties and they do not all agree." This explains in part why her lawyer, Colon de Franciosi, the sole lawyer for all of the civil parties, clearly took a different position than the one expressed and adopted by Chloé Lemaçon.

Wednesday, October 16th: the experts

This day was spent hearing the military and experts of all kinds: ballistics experts and medical examiners. Clichés are easy.

Thusly Admiral Marin Gillier, former commander of the French navy in the Indian Ocean, evoked, between a few colonialist witticisms worthy of the *Y a bon les Blancs*¹⁰² era, "the humanism of the French army which, unlike the Indians, releases the pirates not far from the coast." It's also, according to him, out of humanism that France takes part in patrolling this region. In fact, Mr. Marin Gillier reminded us that the northern Gulf of Aden holds half of global fossil fuel resources and that "*if the situation degrades in this region, the first ones to suffer will not be the great democracies but the little countries for which the slightest hiccup in international funding is dramatic.*" According to him again, "it is for this reason that France feels that it is its duty to participate in regional stability." Mr. Marin Gillier, to finish his exposition on the context of military presence in the Gulf of Aden, spells it out this way: "*I don't have personal knowledge of France's ex-*

102 Tr—A 1988 film about humanitarians in Africa

act interest in Somalia or near Somalia. Traditionally, this is a zone of Anglo-Saxon influence, I don't know a single French company who has business in the Horn of Africa."

So Mr. Marin Gillier had forgotten to recall the installation of the French company Gallice Security in Somaliland. Nor does he mention the fact that the Bolloré group is trying to get itself in on the port platform in Berbera, the main port of Somaliland, or even the fact that Total has oil rigs near the Somali coast through the drilling permits granted from Kenya. More broadly, no one spoke of the French presence in Djibouti, a neighboring country, or economic contacts with other countries of the region.

Each time that he was put under a little scrutiny by one of the defense lawyers, M. Gillier denounced "attempts to derail the proceedings," and pointed out that they were there to judge the fact that five people (what about the two dead?) had taken five French people hostage.

Whatever it may be, this Mr. Gillier — and maybe this speaks to his quality as a sailor — was certainly there to confuse things. So when they ask him about the shell casing of the bullet that killed Florent Lemaçon that was strangely never found, he launched into technical explanations on the fact that they aren't casings but cartridges. Anyway, despite his high function in the French navy, he knew nothing: not only had he had "no access to any convincing information proving that the bullet was French," but moreover he didn't know anymore where the weapons went that the army used during the assault (that had never been found), even though one of them had possibly killed Florent Lemaçon.

After that, the admiral, Hervé Morin (Minister of Defense at the time of the events), appeared. Ronan Appéré, defense attorney, bragged about it that Monday in the press: *"I summoned former Minister of Defense Hervé Morin to appear, because from the start of this affair everything was carried out by the national Navy, the Minister of Defense, so that no one would know the truth."* We will never know if the appearance of the minister really carried any weight in the verdict or if it only served to seed yet a little more confusion in the trial... The fact remains that there was confusion in Morin's comments. A telling example: Morin used the word *fisherman* as a synonym for the word *pirate*, evoking the hostages detained by Somali fishermen. We better understand now why more and more simple fishermen never return to port...

Mr. Morin explained to us his difficult job and the media pressure: *"Me, I cannot allow the slightest error because if I communicate and if I commit an error that will be viewed as a lie, for me that would be risking forever after having to explain myself."* In the end he wasn't pushed very hard and, regarding the arrest of three Somali pirates by the French army with the intention to imprison and try them in France, he gave this wonderful sentence: *"It would be better to be tried in France, and France's actions have been exemplary."* At that moment we would have liked one of the defense lawyers to mention the prison psychosis of Cheik Nour Jama Mohamoud (charged in the Carré d'As hijacking case), and the fact that a prisoner dies every three days in French prisons. They could also have mentioned the numerous condemnations France has received from the European Court of Human Rights. We might have had the vague

notion that army dignitaries were also on trial, but not on the side of the accused. No, there were only three Somalis sitting there.

Then we were entitled to hear the accounts of two ballistics experts. If we hadn't been discussing a death and if the freedom of three people hadn't been at stake, we would have felt like laughing—as if we were viewing a two poets performing a surrealist détournement of language. For example, in the mouths of these two gentlemen, the bullets are transformed into “aggressing agents” and the injuries they caused into “impact zones” or “orifices.” Their highly technical accounts only confirmed that what killed Florent Lemaçon was not a shot from a Kalashnikov, which would have imputed the pirates. But that we already knew: the prosecutor from Rennes acknowledged it in 2010. So we wonder, why bring in these three experts, if not to give the illusion that there was, still, a truth to seek.



Thursday, October 17th: we refocus on the pirates

After two and a half days during which we might have forgotten they existed, the hearing on Thursday afternoon was devoted to the three defendants. The term “devoted” is a bit exaggerated, because in truth Mohammed Mahamoud, Abdelkader Osmane Ali, and Mahamoud Abdi Mohamed were given very little opportunity to speak about themselves. The judge prepared a battery of very specific questions that he posed to each of them. In question was who got on first, second, and third during the boarding of the Tanit, who shot a bullet in the air or who shot at the French piracy trials on french soil

ate – while the frigate had shot twenty-seven times at the Tanit, bringing down the mast... Each response is met with, and compared to, claims recorded during initial custody or hearings before the head investigator. While, on previous days, the various military officials and the minister of defense enjoyed indulgence for their difficulties in recollecting facts from four years prior, the three pirates had no such right let alone the slightest compassion or understanding for their gaps in memory. You can rather easily imagine however that the four years they've just spent in French jails – where chemical sedatives keep things under control – more than favor forgetfulness or confusion compared to what the officials have experienced.

The pirates in solidarity against attempts at division

During the afternoon that day, the judge was not content just questioning each of the defendants on his own acts, he also tried to get each one to describe the others' roles.

Abdi was put in the hot seat more than others, for the role he played. In fact, his situation was the most difficult. As he himself said that day, "On the boat, there were two groups of two who agreed with each other. Jaama and Kadjé and then Mohamed and Abdelkader, and I was on my own." In the testimonies of the Tanit's crew and in the statements made during custody, it appeared that Abdi didn't try to surrender like the two others and that he tended to obey Jaama (the commander), and Kadjé, who seemed to be second in command.

It is the role of a judge to isolate those appearing before him and to break the solidarity between

them. So the judge's behavior didn't surprise us and we were happy to see that none of the three workers of the pirate company wanted to play this game. At this trial, Abdi was no longer isolated. His lawyer, Ms. Glon, and also Chloé Lemaçon, had said that as a nomad coming from the interior of the country he wasn't as highly regarded by the other pirates. Throughout the week, on the other hand, he had been supported by his two comrades of misfortune, though he had been the easiest to pass off as the bad guy. So to the judge who asked at what precise moment Abdi had pointed his gun at Florent Lemaçon, Mohammed Mahamoud answered: "Me, I don't speak for the others. Me, I try to answer questions that concern me directly." On getting this response, the prosecutor became upset and reread the text of the custody statement that implicated Abdi, but Mohammed defended him, saying that he obeyed orders from Jaama.

Speaking about Abdi, Abdelkader Osmane Ali refused any separation: "All three, we were actors. All three, we were the same."

We were delighted that the prosecutor himself refused to fall into the trap of differentiation at Abdi's expense. During his Friday-morning defense she spoke these words: *"I don't hope to draw a distinction between these three. I find it vain to try, with group membership, to determine who at one moment was kinder or more cruel, who pointed his weapon so many times or didn't, who lowered his weapon or tried to hand it over."* But this quibble was only motivated by her desire to jointly convict all three men because, according to her: *"Each one has an equal responsibility in the engagement in something more than an isolated act, and this engagement*

is the taking of hostages for a ransom."

Confusion reigns

On that afternoon, translation difficulties kept coming up. From the beginning of the hearings, those present in the room remarked that the interpreters did not translate all of the proceedings to the defendants. Even if they had learned French during their incarceration, the defendants' understanding of the language wasn't enough to understand everything, especially since there were so many very technical points and since law professionals are quite able to use a specialist jargon that sometimes puzzles their perfectly fluent interlocutors.

That day, we realized that the interpreters did not understand all of the questions that they had to translate to the defendants. It was the defendants themselves who sometimes made this obvious by answering directly in French or clarifying that what was asked of them had been poorly translated. Over and over, some of the defendants answered the question at length in Somali, but the translations of their answers were very short. In any case, while the stakes were enormous for the three men present in the box, you can imagine that a large part of what was said at certain moments must have eluded them. Fabian Lahaie, Mohammed Mahmoud's lawyer, noted for that matter that his client had a hard time understanding what he was accused of in the trial; he didn't deny his responsibility and never sought to exonerate himself, but he affirmed. "That I did not do, I didn't kill Mr. Lemaçon."

This lack of comprehension all the same is surely less the result of translation difficulties than the result

of the confusion that reigned in the content of the proceedings. From the beginning of the week, everything revolved around the circumstances of Florent's death. If one thing is obvious, it's that the three pirates present in the criminal courtroom didn't kill him. Not only is there no doubt about that, but moreover they were not being charged with that but with "hijacking a boat with violence" and "abduction and arbitrary detaining of several people committed as an organized gang."

This Thursday afternoon only added a little more confusion to all of this. While the testimonies of all the witnesses during previous hearings confirmed this fact that everyone knew, if not recognized, namely that it was a French soldier who killed Florent Lemaçon, the majority of the questions still dealt with the details of the assault.

Where were you when the assault took place? Where was Kadjé? Was Jaama killed when he left the main bridge when they offered him the money? Did you hear Kalachnikov shots during the assault? Did you hear shots that could have been made by some of the hostage takers?

These questions, and we aren't transcribing all of them, only served to lead them to believe that the truth, this concept so often invoked in the courts, still needed to be found. But what truth? That of the death of Florent Lemaçon? Yet there could be no doubt that could cloud over the provenance of the bullet that killed Florent.

Piracy and the yoke of work

Only one question allowed the defendants to talk about their lives, and what it was that lead them to engage in piracy. This was the first question that the judge ritually asked during piracy trials on french soil

ally posed to each of the three men who appeared: "Sir, how did you come to be recruited to this job?"

Each time the answer given would serve to show that the men knowingly engaged in piracy and so further incriminate them.

These answers, which we retranscribe more precisely, give us a clearer picture of the realities of piracy in Somalia. A reality that is far from the romantic images in the minds of all those who see a rebel in every pirate, an outlaw defying authority and power. What came through these men's stories and their experience is quite different from all that. For them, piracy has been the outcome of extreme poverty, the path of starvation. In their case, piracy was unfortunately not the path to freedom and the end of subjugation to social hierarchy but a continuation of exploitation.

Throughout their story, we see that in Somalia piracy is as much a business as anything else: a capitalist enterprise with its hierarchy and division of labor. Except that there is no labor contract... To the judge who asked him if he hoped to get some of the money that came in when the job was over, Osmane Ali answered, "They told me I would get money on land. \$20,000, that's not for everyone, that's for having the courage to be the first on board."

In any case, the three men said that they never had an exact idea of how much they would get.

In the testimonies of all three pirates, Jaama appeared to have the role of petty officer in the operation, while Kadjé was his second. "Your honor, Jaama was the boss" or "there were five of us and there was one man who was our leader" were phrases that occurred again and again, without any of the three men using

this as an excuse.

This hierarchy between the five pirates is also quite clear in Chloé Lemaçon's testimony, as well that of her friends. As in any capitalist undertaking, there are those at the top of the pyramid who collect the majority of benefits by carrying out the least unpleasant and least dangerous tasks: we call them the bosses.

Throughout the proceedings, one name came up again and again as being the boss. It was he who recruited each of the defendants, who had – as we hear in a testimony – “invested in them,” by offering them clothes and khat, and most of all by paying their tab at a restaurant – with which he seemed to have close ties and that seemed to be a haunt for pirates. This boss, whose name might be real or made up, we choose not to name here. We will refer to him as S. On board the *Tanit*, Jaama had been in regular contact with him.

Throughout the proceedings the three defendants explained that to them the *Tanit* was more than anything a means to save themselves, a way not to die at sea, but additionally that “vis-a-vis S., it wasn't good to come back empty handed.”

This reality, which reminds us of the classic functioning between worker and company, is surely not the only side of Somali piracy. In fact, we should keep in mind that what we know about Somali pirates and their organization is drawn from accounts of those arrested or interviewed on location through the intermediary of fixers.¹⁰³ Just because they don't

103 Regarding interviews, in the realm of piracy as elsewhere, you can't believe everything you read in the papers. For example, in 2012, the Somali journalist Jamal Osman, in Nairobi, revealed that several people who had appeared in some Western media as Somali piracy trials on french soil

talk about it doesn't mean that Somali pirate groups organized outside of the image of the capitalist corporation don't exist. From time to time word here and there comes to our attention, like about the Somali pirates who want to exchange hostages for a few pirates captured in Somalia and imprisoned in Spain,¹⁰⁴ or the action carried out by other pirates for the liberation of their comrades captured by the Indian navy and imprisoned in India, or the pirate declaration that announced that a portion of the ransoms would go to assistance in Haiti,¹⁰⁵ a country that like Somalia serves as a garbage dump for toxic waste of all kinds.

pirates were in fact actors. In return for a fee on the order of \$200 per day, these "fixers" promised Western reporters exclusive interviews with Somali pirates, which they never would have been able to obtain, and in reality called on several people who passed themselves off as pirates.

In France, Abdurahman Ali Samatar, one of the two acquitted in the so-called Ponant affair, the luxury cruise ship hijacked in April 2008, wound up being presented as a pirate in the magazine *Paris Match*, though he had always denied taking part in the hijacking of this ship. It appears that the interview in *Paris Match* had been a falsification paid for (at his expense) by a lawyer from the Cergy-Pontoise firm. For more information, see the article relating this story and the condemnation of *Paris Match*. On the other hand, no conviction for the future President of the Bar! http://lexpansion.lexpress.fr/actualites/1/actualite-economique/paris-match/condamne-pour-une-interview-imaginaire-d-un-pirate-du-ponant_1039882.html

104 www.20minutes.fr/monde/359925-20091031-couple-otages-britannique-transfere-a-terre

105 www.huffingtonpost.com/2010/01/28/somali-pirates-aim-to-don_n_441256.html

The pirates' testimonies¹⁰⁶

Mohammed Mahamoud

In March, I left the town of Bosaso and I had gone there to work because I heard that there were fishermen who bought fish.

The town I came to was called Alula. There I met a gentleman I know, who I had already worked with. He knew that I navigated little boats for fishing and that's how I wound up with him. We fished together, but our catch was quite small. It was no longer fishing season. Starting in April, you can't fish that area any more.

After, we went to Bender-Beila. I had no money on me, I had no savings and went three days without eating. The gentleman who had the boat hadn't started fishing, because fishing season was over when we went there.

As we hadn't succeeded in fishing, someone told me about another gentleman who could give us work and he put me in touch with him.

The gentleman I was introduced to took me to a restaurant so I could eat. He bought meals for others at the restaurant. Everyone depended on him to eat in this restaurant. That went on for seven days. The eighth day, he gave me \$100 and told me, "Now you are going to work for me in an act of piracy."

As he also traded in khat, people chewed khat behind the place where he sold it.

The judge interrupted Mohammed to ask him if, when he had been recruited, S. had really told him it would

106 To retranscribe these testimonies, we had tried to stick as close to the pirates' words as possible, but the difficulties of translation sometimes obligated us to alter certain words or turns of phrase. Sometimes, the pirates expressed themselves directly in French when they didn't agree with the translation made on their behalf.

be an act of piracy.

I accepted this act. He did talk about piracy, but I accepted because I needed to work.

A few days before we went to sea, S. handed out a dozen rifles. There were eighteen or nineteen of us. Some were already armed, and for those who weren't, he gave us guns and ammunition. We left, the eighteen or nineteen of us, in a dhow that same day. The boat belonged to Pakistanis and Iranians. It was a fishing boat that served well for fishing. We were already armed with rifles and there was a bazooka on board.

We stayed at sea for almost a week. We headed for the interior of the Indian Ocean, and that's exactly where we tried to attack the ship. We had a little ladder for boarding, but we couldn't attach it because it was too short. This ship was a freighter, the African Star. We looked for another ladder to attach to the first one. Then we tried to follow the freighter that took advantage of the scramble with the ladder to escape. The boat was too fast for us. We weren't yet out of gas, but we were getting short of fuel.

As there was so little fuel left, we cut our motor and stayed put. We had a satellite phone to connect to S., but the battery was dead. In that moment, we had lost hope. We were there, desperate, not knowing what to do next, when we saw the Tanit. We waited there because we didn't have enough fuel. S. had previously been commander of five people who had died of hunger and thirst at sea. We were afraid that the same thing would happen to us, and that's why, when we met the boat, we boarded it. I think we had about fifteen liters of gas and that would not have gone very far.

Osmane Ali

I was in Bosaso. A few months later I had gone to Dela

where I met a certain S. who gave me khat, knowing that this S. traded in khat and had already had a history with piracy. I needed money and I was the only one in my family who could work. S. told me: "I'll give you money if you work for me." He told me that I had to show up with a gun because he had already given out the guns he had to the others. I asked someone to lend me a gun, which I told him. There was a boat that S. had boarded and searched that was stopped in the ocean. We knew that on board this boat there were eighteen or nineteen people. S. got on the boat with us and he appointed men to command the teams. He explained to each person his role and what he had to do. He explained that anyone who opposed Jaama risked their life. I had been recruited to follow orders.

The judge interrupted to ask him this question: "You stated to the investigator that you had been payed \$100 and khat to go get the boat and bring it back to the coast. You added: 'It's like robbing a bank, a bank at sea.' Do you confirm this?"

Osmane Ali objected, saying that he wanted to continue his story, but the judge insisted, getting upset: "No, I would like you to answer the question. Me, I want him to answer the questions, notably regarding what he told the investigator!"

Osmane Ali gave in: *Yes. For me, it was like robbing a bank. They told me I would get money back on land.*

Mahamoud Abdi Mohamed

I was born in the sticks in nomad country where I come from. I arrived in the town of Bender-Beila. I stayed for three or four days in this town where I knew no one. I hadn't eaten and had nothing to eat, I just drank tea from time to time. I met a man. I asked him if he could pay for my tea. He said

he had nothing to give me but asked me who I was, where I came from and what clan I was from. He said he couldn't give me money but he could find work for me. I accepted. I was in a critical state, I hadn't eaten, I was famished. He presented me to another gentleman, S., who took me to a restaurant, then bought me clothes. Then, he gave me khat. In the restaurant where I ate, I met a woman who asked me if I was part of S.'s group. Just then, I realized that there were pirates in the restaurant, and there were armed men. I understood then that S. was mixed up in piracy.

I came back to see S. and I asked him if the work he was offering me was in piracy. S. was surprised, he said: "You didn't get it earlier that I work in piracy?" I said that to work as a pirate, I had no rifle. He promised to get me one.

I stayed with these men until we went to sea. We went to Hafun. We stayed there for almost a month and I met Jaama, who worked with S. S. got sick and had to go to the hospital. Then, we went back to Bender-Beila. There was a little ship there, a little boat, and with it we went to sea. Me, I stayed on the little boat and they, they captured the Iranian boat, the dhow. Of the two ships that left to take the Iranian boat, one was lost.

Then we went back to Bender-Beila. There, I got worried, saying to myself that I'm the head of the family, that I could have been with my family while I was there eating khat and all the rest. I was part of a family of sisters and brothers, my father died when I was ten years old. At ten, I became the head of the family who bought what was needed. So I went to see S. and told him I wanted to quit this work and leave. He told me that it was out of the question that I leave, that he had invested, that he had payed for my clothing, for khat, that I had to do the work he asked of me or he could kill me.

He asked me to report to another boat. We went back

out to sea with the men who are here today. Jaama became commander. Same boss as before. Me, I was really worried. There were about nineteen or twenty of us on the Iranian dhow. I didn't know the sea nor how to use a GPS. But we were really far out. I don't know what they said, I don't even know how many kilometers from the coast we were. We were thirsty. Everyone prayed because we were in the middle of the ocean. Jaama said that we were 500 miles from Bender-Beila. We thought that we were going to die and then someone saw the Tanit passing by.

The judge returned to statements made during the investigation: "You had said that you were in distress and the Jaama quickly understood the benefit of taking the Tanit because there were European tourists."

Your honor, I cannot tell you; it's Jaama who was the boss. We saw the Tanit as a way to get back to land, but Jaama chewed us out and ordered us to obey him.

Among the questions asked of the three defendants that afternoon, Ms. Glon, Abdi's lawyer, was the only one who managed to somewhat clarify the reality in Somalia, notably the different places the pirates spoke about. For example, the questions she asked about the town of Bender-Beila, which seems to be the town in which a restaurant serves as base for their employer, allowed us to better visualize something all three defendants told us about.

Ms. Glon: When you talk about Bender-Beila, is it a city or a town? In the restaurant, is there light?

Abdi: *It's a city. About 500 residents. The restaurant, it's a hut where you can eat. There is no electricity. The woman who served us marked down what we ate on the paper showing what we ate and what S. had to pay.*

Ms. Glon: When S. said that you owed \$600, it was for piracy trials on french soil

food, clothing, and khat?

Abdi: *Yeah, that's all.*

Ms. Glon: In the town, are there cars and 4x4s?

Abdi: *Yes. The cars I saw mostly belonged to S. I also saw people who were poor.*

Then, the prosecutor, like all of her colleagues at every trial we were able to attend, tried in her questioning to demonstrate that the defendants were much more involved in piracy than it appeared. All of their responses, which were the same as those in the custody statements and those of the investigating magistrate, left no doubt as to the fact that all three of them were non-specialized workers in the business of piracy. For example, Abdi—whom she asked to confirm that he knew the pirate's code of conduct—answered: *"When we went out to sea, some of them explained these codes to me. They explained that we do not rape the hostages, we do not mistreat them, we do not shoot them. That's all I understood about it."* Difficult with such a response to prove the defendant's strong involvement, but the prosecutor used it in her oral argument the next day to demonstrate that this code, the sole intent of which is to respect the hostages since they have a market value, attests that they are in the ranks of a criminal organization and that the aggravating circumstances of organized gang activity imputed on the accused is incontestable.

Friday, October 18th: Final statements and verdict

The final day of the trial was devoted to the lawyers' oral arguments: the civil parties' lawyers, the prosecutor, and the defense lawyers. The latter plead at once for their individual clients and more generally for all three of the pirates.

Mr. Colon de Franciosi, lawyer for the civil parties

Mr. Colon de Franciosi, lawyer for the crew of the *Tanit* and those close to Florent Lemaçon, continued his trajectory, namely playing both sides. Explaining that his clients were not there to get a conviction for the three Somalis but to achieve, and I quote, “a work of truth,” he put a bit of blame on Hervé Morin and the French government, claiming that “Florent Lemaçon died because the state wanted to send a strong message to pirates.” But his strongest charges were reserved for the Somalis. For example, regarding Paul Moreira’s film *Toxic Somalia*, viewed in the courtroom at the request of Ms. Glon, he said: “What has been done to Somalia? Let’s be clear, what did they do to themselves.”

He demanded no conviction from the court but evoked the three defendants in these terms: “*These three, those who demand their conviction know perfectly well that they committed these acts for cash, for a job to earn a lot of money fast and easy and that is why their responsibility is full and complete and must be seriously punished.*” Easy for the lord of a manor to object to the beggars’ lack of virtue.

The prosecutor

Brigitte Ernoult Cabot began her oral argument by recalling the extreme leanness of the three men when they arrived in France. But this false empathy allowed her to then better deliver this classic maxim: “poverty doesn’t justify everything.”

She presented piracy as a generator of poverty in Somalia. She recalls the Somali fishermen who, because of piracy, “*have no fishing because every fisherman* piracy trials on french soil

who puts his boat in the water risks being taken as a pirate and get himself arrested” and spoke of “the difficulties of businessmen who could intervene in the Somali economy and whose money is systematically suspect, because people wonder if it didn’t come from pirate ransoms.” Without hesitation, she says that one of the questions throughout the trial is that of the freedom of the seas, and asks the jury to sentence the three defendants to between ten to twelve years in prison, referring to precedent sentences rendered outside of France, in the Seychelles for example. Of course we are dealing with an internationalist here but, as one of the defense lawyers reminded her, in matters of jurisprudence we can only rely on decisions rendered by French courts.

Mr. Appéré, Osmane Ali’s lawyer

He spoke again about the troubled role the French government plays in this issue and the fact that France’s raggedy group of piracy police “is catching only underlings who have no choice to do otherwise.” He noted that the accusation that calls itself so concerned with truth hasn’t taken any evidence nor filed a single declassification of incriminating evidence from the minister of defense. Since the recordings of negotiations between the French negotiators and the Somalis are classified as “Defense secrets” one could never know what exactly the pirates were asking for, let alone the three defendants. He recalled that the pirates’ main intention in boarding the Tanit was to get back to land. For him, since the investigation had focused on the question of who killed Florent Lemaçon, the other aspects of the case and notably the degree of participation of the three defendants had been left to

the side. Although he blamed his client for not going all the way when he put down his weapon, he made note of the fact that he barely had a choice but to continue on this path. Better jump into the ocean without knowing how to swim and catch the French frigate in the water than to take a bullet to the head.

Mr. Lahaie, Mohammed Mahamoud's Lawyer

The defense lawyer for the only defendant to appear while out of prison, remarked that in this trial they spent two entire days without speaking of the pirates and a lot of proceedings relating to acts for which they were not accused. Such as: "Imagine that during your trial, the result of which a sentence would be requisitioned and pronounced, no one spoke about you." In his oral argument he cited Chloé Lemaçon before the investigating attorney earlier. *"The three men who are currently detained in France do not deserve to be punished for a crime they didn't commit though they could have committed it... the boss had given the order to execute us if he were shot. The boss was shot, and they definitely saw it. They had their guns in hand, they had the time to execute us, and they didn't do it."*

They spoke of culture shock between the court of justice and the reality of the three men and showed how in the Somali context it is logical for Mohammed to say that for him piracy was "a job like any other job." He counterbalanced the words of the civil lawyer and the prosecutor on the "ambitiousness" of his client, recalling that if he accepted this work, it wasn't because he was captivated by villas, but in order not to die of hunger, pointing out—citing item D207, in which this is specified—that his client weighed 88 lbs.

at a height of 5'9" when he arrived in France. He added that Mr. Mohammed Mahamoud, even if he didn't always understand the proceedings, had decided his line of defense for himself, a line of defense in which he chose not to put his poverty forward to excuse his acts and to take responsibility for them. We actually heard Mohammed outside of the courtroom make similar remarks, notably to the Lemaçon family.

Ms. Glon, Mahamoud Abdi Mohamed (Abdi)

She restated some important numbers to remember: the infant mortality rate (one hundred eight out of one thousand), life expectancy (fifty-one) in Somalia. She spoke of those who will never get to trial and who are a lot more harmful than the pirates, like Saupiquet¹⁰⁷ who is heedlessly pillaging Somali waters under the protection of the European Atalante force. Having to assure the defense of the defendant who was presented as the worst of the lot, she obviously concentrated on his defense. She recalled that throughout the trial, Abdi received notices from the court in writing (in Somali) and never orally, despite his continuing indications that he knew how to neither read nor write. She went over the sentences requested by the prosecutor, recalling that in previous trials in France the harshest sentence was ten years of prison.

She also recalled that what should take precedence in the decision should be to know when the defendants would be released and to do it so that the

107 On this, in a report published by *Le Point* on October 19th, 2009, Patrick Hélias, head of this canned fish company stated: "If the soldiers weren't with us, we could not fish in the richest fisheries, the waters off the coast of Somalia."

verdict is not vengeance.

Clearing Florent Lemaçon's name was very important for his friends and family. They took the media campaign that followed the hijacking of the *Tanit* very hard. Following this campaign, orchestrated by minister Hervé Morin himself, they were harassed by journalists and spiteful people. It appeared plainly during the whole trial that the *Tanit*, contrary to what had been put forward by the army spokesperson and the French government,¹⁰⁸ had followed the security recommendations and had even altered its initial route, heading for Kenya instead of the Seychelles at the request of the French army.

Sadness and confusion

Florent Lemaçon, all throughout the testimonies and notably those of some of the pirates, appeared as a person full of empathy, not only with his friends and family but of human beings in general. Hearing that he was an anti-militarist and rejected the functioning of consumerist society and capitalism, we're hardly surprised that the state served up him and his family to the media and to reactionaries of all stripes.

Unfortunately, more confusion – it was not the memory of Florent that was at issue, nor the responsibility of those who lied and let his family be harassed. What was at issue in this trial was the future of three men who had always lived in the most extreme poverty. Three men who committed an act of piracy but had neither killed nor hurt anyone. With regard to

108 And in contrast to the cruise ship *Le Ponant*, which was not in the security corridor but whose shipowner, third largest in the world, is close to all governments.

what they are, how they got to risking their own life to be able to feed themselves and help their family, the court pronounced three heavy sentences. At the announcement of the verdict, a friend of Florent who had been present the whole week, left the room crying, saying: "This is not what Florent would have wanted."

Actually, nine years of prison is a very severe sentence for the three defendants, who had not even served half of their sentences and could not hope to get out for several years. M. Mohammed Mahamoud, who had lived on parole for a year and who, outside, had made friends that accompanied him for the whole trial, would now be back in prison, without any possibility for reducing his sentence for the time being.

And then they say that justice has nothing to do with vengeance!

The Somali pirates in French prisons

The Somalis accused of piracy have been, during their incarceration, distributed across several prisons: Fleury-Mérogis, Fresnes, la Santé, Osny, Rennes, Rouen, Nanterre, Villepinte. Prison is no vacation for anybody and what the Somalis charged with piracy have experienced is unfortunately not unique to them. In a general way, to be a foreigner in prison is obviously to take part in the same daily hassles as other prisoners, but foreigners are more likely to be poor, and lack of fluency in the French language carries heavy consequences. This makes things all the more difficult and provokes a lot of discrimination.

What's more in this story is that these men were taken by the French army and transported more than six thousand miles from where they live. In less than twenty

ty-four hours they found themselves in a completely different world. The lawyer for one of them often recalls how his client could not place France on a map and he had to bring in a globe to show him where he was.¹⁰⁹ The latter, realizing that his family could never come to visit him, collapsed in tears. Another thought that one day he would return to Somalia on foot...

If several of the examples to follow were told to us by Somali “pirates” or their friends and family, several came from the report¹¹⁰ that concluded the investigation by the Office of the Controller General of Prisons between November 2012 and January 2013. This investigation concerned only fifteen Somalis detained for acts of piracy committed in the Gulf of Aden and focused on three prisons: Fleury-Mérogis, Fresnes, and la Santé. It was followed by several complaints lodged by some of these Somalis for assaults they experienced in Fresnes.

This chapter, like many of the others in this book, is only a partial account of what was experienced by the Somali prisoners accused of piracy.

Special status

The media barrage surrounding the piracy cases did not make life easier for the captives brought to France. They found themselves subject to special status during their detention. If they were all considered “media significant”¹¹¹ in their files, they also had labels on

109 Of course many French citizens would not be able to place Somalia on the map if randomly asked.

110 Available at www.cglpl.fr/wp-content/uploads/2014/06/Rapport-enq-sur-place-Somaliens.pdf

111 This media-friendly status is not inconsequential: at Fresnes two piracy trials on french soil

top of this, depending on the particular clink and administrative imaginations. Some of those incarcerated in Fresnes or la Santé were added to the list of those related to terrorism or organized crime. Others were saddled with “lifestyle indicates surveillance” or notices in their file like “represents a security risk.”

Those imprisoned at Fleury-Mérogis were labeled as “high-risk prisoners,” a category that only exists at that prison. This status obviously has negative impacts on life in prison: a restriction on working for some, repeated cell searches for others, and, of course, even greater isolation... It’s by virtue of one of these categories that the administration of Fleury-Mérogis recommended that one of the Somalis be placed “alone in a cell, facing the watchtower, until the end of his appeal.” When everyone knows that all of them complained of isolation, of the forced solitude in prison, it’s no surprise that some of them attempted suicide!

The lack of communication and isolation are in effect the major difficulties for the Somalis imprisoned under the rubric of piracy.

The special status given to pirates and the media attention surrounding piracy in the Gulf of Aden also has negative impacts on solidarity from the outside. Actually, in the Office of the Controller General of Prisons report, it appears that the Somali people living in France had organized to financially support some of the accused Somali pirates and especially those who particularly suffered from their detention. But according to an SPIP¹¹² file, none wanted their names to ap-

Somalis could not work because of this famous status, according to officers from the 1st and 2nd divisions.

112 Tr—Service Pénitentiaire d’insertion et probation. A French Peni-

pear in the money orders,¹¹³ out of fear of being accused of supporting and backing piracy.

Isolation, lack of communication, and distress

Evaluations of suicide potential done on several Somalis accused of piracy indicated that they were depressed and appeared sad. The character reports coming from the clink mentioned "poor physical state and low morale," an "incapacity to express and communicate their feelings," such things as "dealing with cultural isolation poorly," or even "the prisoner does not communicate (language barrier and fear) and cries often." If the penitentiary administration mentions these problems in its reports, it rarely does anything about them, so long as nothing serious happens. For example, following several suicide attempts, one of the Somalis was transferred and placed in a cell with another Somali, since the penitentiary staff thought that he would benefit from the company of someone like him.

Against this isolation, several of the accused pirates took action. At the Villepinte prison notably, many refused to eat in protest of the fact that there were no other Somalis in the facility. Another set fire to his cell to demand transfer. Some of these acts appeared to be motivated by profound despair.

We should also point to the experience of one of the convicts from the Carré d'As trial, who dealt with prison much better thanks to the solidarity of his fellow prisoners. In fact, he had been placed in a cell with

tentiary agency that seeks to reduce recidivism through various means.

113 In some prisons, orders were given to send photocopies of all sent or received packages and money orders to prison intelligence.

Basque and Corsican¹¹⁴ political prisoners who immediately knew how to show him fraternity and solidarity and helped him to understand the prison universe.

Over the course of their imprisonment, several of the Somalis accused of piracy developed psychological problems that will probably affect them for life. We have already mentioned one who was stricken with prison psychosis.¹¹⁵ While he is the only one whose situation appears irreversible today, we note that the time spent in the clink has seriously destabilized more than one of them.

To the violence inherent in depriving someone of freedom and the loss of one's bearings, we of course have to add the violence inherent to the world of prison. We may, without oversimplifying, consider prison as the streetsweeper of the proletariat: there, as elsewhere, there are those with whom it is possible to create solidarity... and those with whom it is not. Mostly, we can't forget that captivity creates madness; daily life can then quickly become hell, all the more when one is held, twenty-two out of twenty-four hours a day, captive with others in one hundred-square feet cages! Some Somali pirates, some of whom were minors¹¹⁶ when they arrived in France, were assaulted by other prisoners in their cells or during walks. The penitentiary staff then talked about "cultural differences." ... Between 2008 and 2013, at least seven Somali pirates requested cell transfers for difficulties in cohabitation.

114 Tr—Two nationalist separatist groups in France

115 See the chapter on the Carré d'As appeal trial pp 94-99.

116 On this note, the Controller General of Prison's report notes that two of the youngest prisoners (arriving at age sixteen or seventeen) are also among the most psychologically weak.

Prison staff and guard assaults

Obviously you cannot talk about violence without mentioning the prison guards. It is difficult enough to be exhaustive on this topic because most of the time, whether aimed at Somalis or other prisoners, the violence of penitentiary agents is denied and even covered up by their superiors. In general we know only about these assaults committed by the guards after disciplinary boards that target the prisoners. For example, an accused pirate serving in Fresnes appeared before a disciplinary board for having threatened a prison guard with a fork. He acknowledged his actions but explained that he grabbed the utensil to protect himself from the guard who had previously punched him.

The prison administration is obviously more prompt to report on any incident in which its staff or its property are the victims. For example, several incidents have been reported and led to disciplinary recommendations, notably two assaults on guards (which closed without further investigation) at the Santé jail and six at Fresnes. When we talk about assaults, according to reports they go something like the one in which a Somali refused to show his pass card then tried to punch a guard.

At Fresnes, the supposed assaults on prison staff were all punished in the disciplinary wing. In the investigation report by the Controller General of Prisons, the Fresnes prison is quite clearly overrepresented in physical and psychological assaults inflicted on imprisoned Somali pirates, whether the assaults are committed by the prison guards or by ERIS (regional intervention and

security team, a sort of RAID¹¹⁷ for the clink). The director of Fresnes himself almost systematically contests all of the assaults committed on these grounds by his men. He even held the Somali pirates responsible, indicating that three of them became more aggressive after their conviction at the end of their trial. He argued in a letter to the attorney general that these three pirates imprisoned in his facility had, I quote, “fit in too well” and that, for everyone’s security, they should be transferred.¹¹⁸ When one of these three claimed to have been mistreated by prison staff, the director of the facility deemed the denunciations “totally calumnious” and made it clear that “the victims of these mendacious rantings reserve the right to lodge a complaint.”

Several Somali prisoners told of assaults by guards several months after the assaults. At the time of the events they either did not yet understand how the prisons functioned, or had not yet gained a sufficient grasp of the language to report on anything at all. So a Somali pirate, brought to Fresnes following his call to the Fight Prison Assaults Hotline, immediately saw his case closed under the pretext that he had related events that he was incapable of accurately dating or clearly imputing to an agent. The director made it clear

117 Tr—The elite unit of the Police Nationale

118 Here is an excerpt of this letter: “*The transfer of those involved to another facility in the Parisian region is indispensable. Even though since their arrival, supervision of their sector aimed to favor an improvement of the conditions of their detention (issuing of cell work, free television, French classes, etc.), the change in their behavior since their trial has become very problematic. The assaults and insults against staff members have increased ...*” (sic) *managing them in regular detention at the Fresnes Prison cannot go on without putting the security of persons and property in danger.*”

moreover that the complainant gave no explanation for his silence for the months following the altercation with the guard. The Somali pirate himself indicated that he couldn't officially file a complaint over the altercation when it happened because he lacked enough of the French language.

Even when they can file a complaint, our Somali friends are hardly listened to ... For example, in March 2012, when one of them had his arm fractured after being violently pushed onto the rungs of his bed by a guard, the director of Fresnes maintained that he fell on his bed.

Since their transfer to the Bois d'Arcy prison, two of the youth convicted in the Tribal Kat affair suffered bullying and humiliation from the prison staff. One of them, handicapped, had his crutches taken from him and was not allowed to use the elevator. As he was obliged to take the stairs sitting down to get to the courtyard for walking breaks, several of his co-prisoners launched an official protest on his behalf.

Since we are mentioning a movement of prisoners in favor of one of the imprisoned Somalis, we'll add that at Fleury one of them took part several times in collective acts of resistance and notably a refusal to return to cells.

Communication problems

An investigatory report on disciplinary procedure analyzed the behavior of the Somali pirates: *"Prisoner with very poor communication, does not speak French, which provokes irritation, and only makes for incomprehensible gestures."*

The communication problems of Somalis im-
piracy trials on french soil

prisoned in France for acts of piracy are at the same time contested by the prison administration itself when it's convenient. For example, during a disciplinary commission, the staff took the liberty of claiming that the accused expressed himself "in French, which, though certainly rudimentary, allowed for constructive exchange." This is completely contradicted by the lawyer of the accused. We note in any case that during the majority of their appearances before the disciplinary council the Somali pirates were not assisted by an interpreter and that the administration subsequently justified this lack in any way it could.

The divergences in assessment concerning the degree of French language skills of the Somali pirates are not however all motivated by the interests of the prison administration. They are also the fruit of its incompetence. For example, in a period of one month, a Somali was at first recognized as "speaking French and being able to read and write," then "speaking basic French and not reading." In a single report submitted at the hearing, another was considered as "having a mid-range level of French," then as "not speaking any French" and "illiterate."

Still within the same logic, one of those convicted for piracy was presented as having an accounting degree in a report from May 2009, while he denied having any degree in 2008. This same person was labeled illiterate in 2010 upon his arrival at the Nice jail, while it is mentioned on several occasions that he knew how to read, write, and do accounting in Somalian.

The prison staff would also sometimes advance the hypothesis that some of the Somalis faked incomprehension. One of them submitted these comments

after an arrivals hearing, "Only speaks Somalian and knows English despite what he would have us believe. Hearing nearly impossible."

In any case, what is certain, is that upon their arrival in France not a single one of the Somalis accused of piracy spoke French and very few of them had a good level of English.

The Somali pirates, like the majority of foreigners who neither speak nor understand French, are victims of flagrant injustices during their detention. These injustices are all the more difficult to deal with as the Somali prisoners are stuck in a state of extreme destitution when they aren't allowed to work in prison. In fact, assistance and rights – in prison more than elsewhere – are only granted upon request. So, for example, a hot plate and a remote control are normally handed out to those known to be indigent. Mr. C., one of the Somali prisoners in Fresnes known to be poor, didn't know about this arrangement and thought he had to hustle to buy these items. This prisoner spent several weeks in his cell with a television but no remote. Each morning, a guard passed by to turn on the television on a given channel and came back by in the evening to turn it off. In the meantime, Mr. C. had no way to turn it off, change the channel, or to turn the volume up or down, the television being placed behind a transparent hard plastic case!

Somali prisoners, like others no doubt, are at the whim of the prison. Like Mr. H., imprisoned at la Santé, who had written a note indicating that he had not received any of the assistance for people without resources. He received a handwritten note stating, "It is not automatic (like antibiotics)."

In order to have access to certain rights, at least three of the accused Somali pirates have had to resort to hunger strikes; one of them lasting thirty-nine days at Fleury-Mérogis.

These difficulties are more pronounced by the fact that rules change depending on the prison. For example, hot plates allowing prisoners to cook for themselves are officially allowed in certain prisons, forbidden but tolerated in others, and strictly forbidden in yet others. It's a little difficult to wind up in this arbitrary environment, all the more for men who do not fully, or at all, understand the language or social codes. We should point out that in four years of preventative detention some Somalis were transferred four times.

And though not a single French prison has translated its New Arrival booklet into Somali, the prison administration demands that Somali prisoners respect the same rules as the others. Haphazardly when it comes to transfers, we also note that the Somalis also change their dietary regime and of course religion, since some who had the option of pork free meals in certain jails (Nice, Bois-d'Arcy, Osny) no longer do at la Santé! One has to wonder what's behind the translation and explanation problems ... that and all of the ill will on the part of the prison administration!

It would appear that those who were convicted in the Tanit affair and who were then immediately imprisoned in several prisons in Brittany had a less complicated detention than the others. In prison, they requested and obtained work to earn some spending money and some of them were able to attend classes. On top of that, they did not have to go through transfers during their temporary detention, prevent-

ing them from repeatedly having to adjust to different regulations.

Medical care

Several reports drawn up upon their arrival in France noted their state of physical weakness and extreme thinness.

Many among them (at least two) had also suffered gunshot wounds following their arrest. One of them, charged in the Tribal Kat affair, arrived in France handicapped and could only move with the aid of crutches. We saw at Bois-d'Arcy that his unique situation got him no special assistance and that he needed the solidarity of other prisoners for his handicap to be taken into account.

Another of the defendants in the Tribal Kat affair, arriving as a minor in France, had serious difficulties because of his physical state. In fact, at the beginning of his incarceration at the hospital in Fresnes, he was diagnosed with a serious lung condition that required major surgical intervention and a long hospitalization. This very young prisoner got no explanation prior to the surgical intervention. He was pulled out of the prison and taken to the hospital for the operation without knowing what was being done to him. When he awoke short one lung, he was convinced one of them was taken for organ trafficking ... With no aid from an interpreter to explain his illness and since access to his medical file was refused – to him as well as his lawyer – he has since been very distressed about his health and his contact with medical personnel. We should add that when he returned to his detention

at Fresnes,¹¹⁹ he was placed in a cell with two prisoners who smoked, something absolutely incompatible with his respiratory issues and his post-operation condition. So he asked for a cell transfer through the official channels, but for the prison administration it must be a punishment to have to live in a smoky cell when you've just had a lung removed! Since they ignored him, one day he refused to return to his cell. The guards used force and drew up an incident report and submitted it to the district attorney of Créteil, for refusing to return to his cell "for no apparent reason."

After prison, more prison

Once they are freed at the end of their sentences, Somalis convicted under piracy charges are generally transferred directly to a retention center under the pretext that they do not have a *titre de séjour*.¹²⁰ A retention center, according to the state, is not a prison, just a place where people without papers are kept until their deportation can be arranged (a maximum of forty-five days).

The problem for Somalis is that officially France does not deport to Somalia... But no matter! So Ahmed, one of those convicted in the Carré d'As affair, spent forty-five days in a retention center in June and July 2014; forty-five days during which he requested deportation... in vain. In effect, the French government

119 In this prison, a member of the medical staff pointed out to the investigators of the Controller General of Prison's report, who interviewed them on the communication problems with non-francophone prisoners, that he was "very good at miming."

120 Tr—A type of long-stay visa that in some cases permits foreigners to work (similar to a US green card)

will not take on or provide any deportation to Somali territory, not wanting to place the lives of its “reaccompaniment agents” in danger. A judge from the appeal court in Paris clearly expressed as much when Ahmed came before him, “Oh, anyway it’s impossible to deport someone to Somalia” But he did not free him for it!

After having spent his forty-five bonus days in the retention center, Ahmed was not freed, as is normally the case. His friends had planned to meet him upon his release, but it was the cops who came looking to drive him to Soissons, a town where he obviously knew no one. There, he was assigned a residence in a sort of hanger where a dozen other people already lived, people who also seemed to be in tough situations. We learned later that this place is a shelter monitored and managed by Coallia, a company that makes a business of housing people in difficult situations. Ahmed, who at no point was informed of the length of this house arrest, had to check in at the police station every day. After a while, he found this to be a waste of time and decided, consequently, to retake his freedom. We wish him farewell and good luck!

The Teltow drama

The half-decapitated body of a young man was discovered on the morning of May 5th, 2015, by employees of the center for asylum seekers in Teltow, near Potsdam, Germany. The victim was named Khadar Yusuf, he was twenty-one years old, Somali, and had escaped his country to come under the protection of Germany, where death awaited him in the shadows of a dormitory. The author of the crime was a thirty-six year old

Somali who, like the victim, was awaiting asylum.

The two men shared the same small room with other Somalis. Yet lack of privacy was not the reason for the crime, nor was the Somali interclan pseudo-war. The man who committed the murder by stabbing his victim nine times, suffered psychiatric problems with visual and auditory hallucinations. A psychiatrist appointed by a French committing magistrate had diagnosed the pathology and a report was submitted to the French justice system in the spring of 2009. The future killer, Sheik Nuur, was at the time incarcerated at Fresnes for acts of maritime piracy.

He was born in Garowe in 1978, was captured with five other Somalis, one of whom was a minor, by special forces in September 2008, aboard the *Carré d'As*, a French sailing ship.¹²¹ The French army's assault resulted in the death of a twenty-five year old Somali, killed in his sleep, the capture of six others, and the liberation of the French skippers. The commando intervention, praised by the highest levels of the French government, took place a stone's throw away from the Somali coastline without the authorities of the country being notified. The same went for the deportation of the six Somali nationals who were transported, chained hands and feet, to France. After having been through days of "interrogation" in the Section de Recherche de la Gendarmerie, the captives were sent by TGV to Paris, where they successively appeared before two magistrates, who decided where to place them in custody.

Sheik Nuur arrived in Fresnes at night. He was subjected to the ritual of being put to the screws be-

121 See page 94 for an account of the first day of this trial.

fore being placed in his waiting cell. How did that go? In what language did the officer booking him give him instructions? What did the prisoner retain? Did he understand, even roughly, the rules that regulate prison life and the non-respect which winds up with one in solitary?

The Somali herder who became a fisherman (because of an economic drought that decimated the family livestock), who only spoke his native language, that night did not receive the aid of an interpreter.

Everything is foreign to him in this prison. He is alone in a hostile and conflictual environment. The cultural isolation and his poor understanding of the code of conduct aggravated the imprisonment; his detention proved to be a Way of the Cross. The prisoner's psychological state progressively deteriorated. Ten months after his incarceration a psychiatric expert appointed by the judge came to visit him.

To the latter's first question, "how are you, monsieur?," he responded that *"everything is going well for him, that he lives with his wife and children in his cell, that he is growing fruits and vegetables and that thanks to his harvest he is feeding the guests in Fresnes and other prisons..."*

"The subject, brutally taken from his natural environment, is showing characteristic symptoms of prison psychosis" the expert said at the close of the consultation. His diagnosis is unambiguous: Sheik Nuur is suffering psychiatric problems. No matter, the judge continued his course without looking into the file of the "subject."

The Carré d'As trial opened on November 22nd, 2011, before the Paris criminal court, and Sheik Nuur piracy trials on french soil

appeared alongside the other defendants. Sometimes haggard and lost in his thoughts, sometimes joyful for no apparent reason, he sat quietly and responded to the court as best he could. After three weeks of the drawn-out trial, he was condemned to seven years in prison.

When the sentence was announced, he yelled: "Vive la France!" As the interpreter tried to explain to him that he had gotten seven years in prison, the condemned began counting by bending the fingers on his right hand, a gesture he repeated several times before being forcefully removed from the defendant's box by the escort.

The day after the trial, the press led with lines like "Carré d'As Affair Ends with Light Sentences," "Lenient Verdict," "Moderate Sentences." It only took a few weeks after the publication of these articles for the Public Prosecutor to file appeal against the criminal court's decision. Cause and effect? The defense of the time thinks so.

In February 2013, the Somalis appeared at the appeal trial before the Melun criminal court—we might add that he claimed that the interpreter was his father and pointed at him, *"He has two bodies (guises), here, he is an interpreter, in Somalia, he's an old man who lives in a native encampment, in the hinterlands of Garowe."*

He is taken back to Fleury-Mérogis. The prison kept a place in the hospital to the end for Sheikh Nuur, who received no medical care either in this jail or in the one in Nanterre where he spent the final years of his sentence.

Despite alerts issuing from psychiatric experts, he was released into an unknown France without any formalities. The future murderer went to Germany, a

country where he had just been convicted, recognized as being "responsible for his acts."

So what about the responsibility of the French justice system?



	arrests		prosecutions			conviction rate	casualties of pirates		death rate
	yes	no	brought to judicial authorities	brought to trial	freed	prosecutions	dead	wounded	
see note #	1	2	3			4	5		6

law enforcement body

CTF 150/151	156	59	52	5	17	24%	1	0	.5%
EUNAVFOR	661	33	198	69	20	29%	4	6	.6%
NATO	233	33	39	17	0	15%	6	3	2.3%
National (France)	54	0	54	42	0	100%	3	0	5.6%
National (non EU)	279	60	209	34	11	62%	58	28	17.1%
Local *	321	35	230	154	7	65%	17	13	4.8%
Private							1		
Conflict/ Accidental							15		
Undistributed		200							
Total	1704	420	782	321	55	37%	105	50	4.9%

Principle sources: Bruxelles2 database, EUNAVFOR, NATO, US Navy, US Dept of Justice, UK Royal Navy, Marine nationale française, Dutch Navy and Dutch Minister of Foreign Affairs, Danish Navy, Spanish Minister of Defense, Bundeswehr/Marine, Belgian Armed Forces and Belgian Minister of Foreign Affairs, Seychelles Government, Autonomous Government of Puntland, Government of Somaliland, Yemeni Government, Indian Navy, South Korean Minister of Defense, Malaysian Minister of Foreign Affairs, Kenyan Minister of Justice, national daily newspapers and press agencies, NGO Ecoterra ...

Appendix 1

Survey of counter-piracy operations in the Indian Ocean

As an example of official statistics, this table of arrests, releases, trials, those killed and wounded provides a hardly exhaustive survey of the actions of antipiracy forces deployed off the Somali coast from April 2008 until April 2011 (published on Bruxelles2 in April 2011).

Notes

1. Arrests: for warships, crossing the Gulf of Aden, the Indian Ocean, or on the Red Sea, of which some are caught during the attack, or following strong suspicions (pursuit, discovery of weapons upon boarding). In these cases the arrests accompany interrogation (often on board the ship), proceedings, then turning over to judicial authorities or liberation. One might categorize them under “police custody.” Some stopped for questioning are released immediately, after the destruction of found weapons—most often, because of lack of proof that would lead to conviction or the absence of a nearby tribunal capable of trying them; others are turned over to justice (see 3).

2. Non-pursued: add to arrests to have an idea of the number of questionings: suspects that have been stopped but left on their boat with no further action, or who were left to escape when the means to arrest them was available. This category includes simple identity checks. This number is very difficult to estimate and the number here is certainly lower than the actual one. By a quick estimate, it’s likely at least double this number. According to a survey carried out by

CTF 151, at the end of May 2009, the number of freed pirates was 212.

3. Handed over to justice: handed over to judicial or police authorities, most frequently to neighboring countries (Yemen, Puntland, Kenya, Seychelles). Some of them have been transferred to the States from which the forces that captured them originate (France, The Netherlands, USA, Spain ...) to be tried there. Others are freed after their trial.

4. Judicial efficiency rate: This is the number of suspects handed over to the courts, in relation to the number of suspects arrested. Take note: some ships participating in multinational operations will fly their national flag to "deliver" the pirates to "non-contract-ed" countries or to carry out offensive operations. The statistic for this type of operation is still more arbitrary, because some data are difficult to obtain. (notably the number of pirates who are simply disarmed).

5. Kills: the number is essentially due to the actions of the Indian Navy, who to its "credit" has 27 kills. Of the global number, 16 appear to be fishermen or sailors killed by "error." Six pirates were drowned "alone" after the payment of ransom for the Sirius Star. Ten others were drowned after the liberation of the Moscow University.

6. Loss Rate: number of suspects killed relative to the number of suspects arrested.

* Local Force: this category counts navies on the Indian Ocean from the Eastern side and the Gulf of Aden (Somalia, Kenya, Tanzania, Yemen...). For simplicity, actions by the Indian Navy are considered national action even if it takes place near India.

Appendix II

Non-exhaustive list of pirates and fishermen killed during military operations

September 1, 2008

French commandos assault and liberate the Carré d'As: 1 death.

November 18, 2008

The Indian navy fires on a boat of fishermen captured by pirates: 15 Thai fishermen disappear (no indication as to the number of pirates killed or lost...).

November 11, 2008

The UK Royal Navy aboard the HMS Cumberland engage to rescue a Danish cargo ship: three Somali or Yemeni pirates killed.

January 9, 2009

Handing over of the ransom during the hostage situation on the Sirius Star: six pirates drown after the exchange.

April 8, 2009

American army frees the captain of the Maersk Alabama: three pirates killed by special forces snipers.

April 10, 2009

French army intervenes to free the Tanit: two pirates shot and killed.

April 26, 2009

Yemeni coast guard kills two pirates.

April 29, 2009

Exchange of gunfire with a helicopter from the Russian destroyer Admiral Pantaleev: one pirate killed.

May 28, 2009

Indian helicopter from the INS Talwar intervenes against a skiff approaching an Indian merchant marine vessel: two killed (and four wounded).

March 23rd, 2009

Private guards from a ship from Dubai, the MV Al Meezan, open fire during an attempted boarding: one pirate killed.

May 6, 2009

Russian ship Marchal Chapochnikov intervenes during the liberation of the Moscow University: one shot and killed and ten drowned.

November 13, 2010

Death of three “pirates” who had attempted to attack a Kenyan patrol ship off the coast of Kilifi

November 20, 2010

During the liberation of the fishing boat FV Fai, coast guards from the Seychelles kill one pirate (one pirate had amputations following his injuries).

January 21, 2011

South Korean special forces intervene in the liberation of the chemical cargo ship, the Samho Jewelry, resulting in the death of eight pirates.

January 25, 2011

Failed attempt to retake the German container ship Beluga Nomination by force: one pirate killed.

January 29, 2011

Retaking of Thai trawling ship Prantalay by Indian forces: ten pirates killed (and several critically wounded); six fishermen disappear during the assault.

February 22nd, 2011

American marines free hostages from the yacht SV Quest: four killed (two pirates and two hostages).

February 15, 2012

Two Italian marines assigned to protect the oil tanker Enrica Lexie along the coast of the State of Kerala (south-west of India) shoot at a boat of Indian fishermen who they mistook for Somali pirates: two Indian fishermen killed.

October 25, 2012

Dutch warship HNLMS Rotterdam opens fire on a dhow suspected of being a pirate mother ship: one dead.

December 15, 2012

Puntlandi forces intervene against hostage-takers aboard the Mv Iceberg1: four dead.

Appendix III

Piracy risk forecast

Insurance and risk management company Jardine Lloyd Thompson publishes maps of the Indian ocean indicating potential risks for maritime transport each week, based on meteorological forecasts. A color gradation indicates the zones or navigation conditions likely to be favorable or not for small vessels, and thus potential pirates...

Appendix IV¹

Piracy from a German perspective

Sentenced to twelve years for maritime piracy at sea

A forty-four year old Somali man was sentenced to twelve years in prison by a German court for maritime piracy along the Horn of Africa. The pirate was found guilty of abduction and aggravated ransom for his participation in the assault of a German chemical tanker in 2010, according to the decision from a tribunal in Osnabrück (northwestern Germany).

He of course admitted to being aboard the chemical tanker, but he claimed to have only washed shoes and cut hair for the pirates. His trial was held in Osnabrück, in the regional State of Lower Saxony which is also home to the seat of the shipowner operating the chemical tanker.

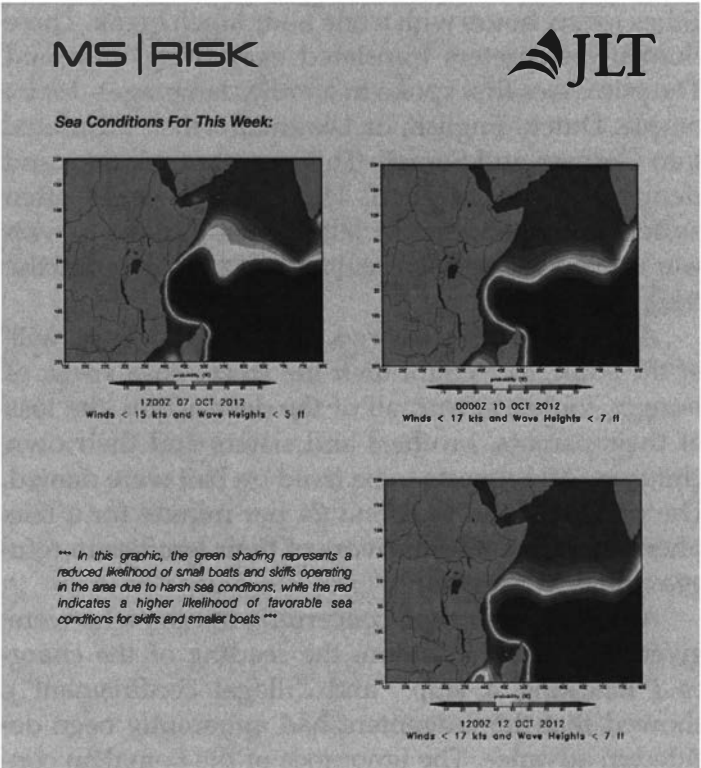
This trial was the second for piracy in Germany in

¹ The book *Moderne Piraterie* by Ralph Klein from publishers Assoziation A. came out prior to the end of the Hamburg trial. In it the author explores, in addition to the contemporary context in Somalia, an historical approach spanning several centuries, notably evoking the African pirates entering the English Channel in 1817 who captured German ships. He gives examples of repression from that time. According to him, the Somalis have intensified their practice of piracy from two hundred years ago and, in Somalia, to be a pirate is a noble trade. Many shipwrecks and flotsam along the Somali coast have also benefitted the population. He recounts that at the beginning of the 20th century, when the Italians wanted to build a lighthouse on the Somali coast, the people there strongly opposed it, fearing that it would spell a loss of revenues for them... There is also a support site for Somali pirates with interviews with Somalis and drawings from the trials as well as of the pirates: www.reclaim-the-seas.blogspot.fr/Phrase. The site's introduction: "The fishermen, when they lose their fish, they think."

a space of 400 years. In 2012, a tribunal in Hamburg (the north) convicted Somali pirates and issued sentences ranging from 2 to 7 years in prison. This trial was then the object of commentary carried on Indy-media, signed by “an observer in solidarity”:

In Hamburg since 2010, ten Somalis, three of whom are adolescents, are tried for piracy (excerpts)

This is the first trial of its kind in Germany, and the german judges wanted to make “a political statement of dis-



suasion implemented as an example." The "charged pirates" have been imprisoned for eight months, trapped for over a week aboard a Dutch frigate, subjected to military intelligence interrogations, then placed in a dutch prison and now for 17 months in Hamburg: the youth on the Hahnöfersand prison island, the adults at Holstenglacis in the investigation prison.

During the trial, the youth were shackled. Only a sparse audience could attend behind a glass wall. Flanked by two defense attorneys, each of the charged is fitted with headphones; this would go on sometimes for six hours with a one hour lunch break. Three Somali interpreters translated everything they said. The witnesses first spoke in another language – for example, Dutch, English, or Ukranian – then translated into German and Somali. This process took time and demanded concentration. The charged would often suffer from headaches or felt ill (many of them, with war trauma and serious health problems, attended the trials on medication).

A few have been allowed, thanks to the "good will" of the court, to recount their life story. They speak of hunger, violence, war, all of the destruction, the loss of their parents, brothers and sisters and their own children. All requests to be freed on bail were denied. The prisoners had to spend €4 per minute for a telephone call with the survivors of their families in refugee camps in Somalia.

After an unfair trial, concerning minors who were given very little attention, the reading of the charges ("hijacking a ship" and "illegal confinement"), showed that the judgement had apparently been decided in advance. The ignorance of the Somalian con-

text on the part of the court and the lack of will to go there for witnesses in their defense makes this trial a constitutional farce. Only the length and nature of the sentence seemed to preoccupy them, as is the case for political trials. They have to make an example, to make a “dissuasive force” as they have declared.

Appendix V

Protection teams at sea, welcome aboard...

In 2014, significant internal changes took place Puntland. A new economic-political class came to power. The Somali-American economist Abdiweli Mohamed Ali Gas became president in Puntland. Piracy money stopped being reinvested in new operations at sea but moved to other financial interests, which was tied to the return of many exiles with new political or market ambitions. A biometric census of fishermen was organized: with the intent that power could determine who had the right to go to sea. Piracy would thus disappear little by little by the playing out of an internal dynamic and not resulting from the Atalante operations or those of private companies. It matters little for France, for at that moment it decided to respond to the private security lobbies by giving them a legal framework for their protection teams at sea.

Bringing in private and armed French militias on ships, this has always existed, but before now it has only been possible if the employers were not based on French territory. In Great Britain, this activity has always been a great success. In France, on the other hand, maritime insurance companies have always had to keep pressure on members of parliament, and

still do. French companies not registered in France already existed, serving an official role only as a consultant, like KSI in Brest. In 2014, the Ayrault government gave into these private interest demands, “in order to position themselves on equal footing with their European counterparts”, and proposed a law².

The law was adopted in May 2014. Teams recruited by private companies were registered by the National Council for Private Security Operations. The text seeks to encourage shipowners to repatriate ships presently chartered by French companies under foreign flags back under the French flag. At issue is bringing on 500 to 1000 employees with an average salary of \$8000 per month. Between the travel and the action, a perfect and quick conversion for soldiers. Finally the opportunity to limit the use of non-lethal arms like, for example, singles from the American singer, Britney Spears, which are played very loud to keep pirates away. According to Officer Owens from the British Merchant Marines, quoted in the Scottish Sunday Post, the strategy works: “These songs were chosen because these guys hate western culture and music, so to use Britney Spears singles is pretty appropriate...”

Excerpts from the report from the National Defense and Armed Forces Commission on the legal project related to private ship protection operations (April 2014)
Following a revisiting of the old tradition of protection of the Royale (French National Navy):

“The protection of ships under the French flag is a mission which the French Navy has performed for a very long time. In the months of May and June 1794, Admiral Villaret de

2 See www.ksi-maritime.fr/images/presse/05-max.pdf

Joyeuse thusly engaged his forces during the “Battles of Prairial” to assist the entry of a wheat convoy into Brest. All the same, to combat modern piracy, the action of our armed forces does not seem sufficient.”

We have to reassure those who trust public services: *“The reporter would like to strongly emphasize: this in no way is a case of abdicating a part of sovereignty for the benefit of the private sector; nor is it a “test balloon”, a prelude to a progressive and rampant privatization of missions allocated to our armed forces. In effect, the navy will continue to put its Embarked Protection Teams (EPE) at the disposal of shipowners as [it did for] the requests made by fishing boats (tuna boats-seines operating in the Seychelles) who were 100% fulfilled.”*

We must justify this law above all because of the loss of money resulting from piracy: *“It is worth noting all of the particularly damaging consequences piracy entails (outside of the payment of ransoms). This additional cost is notably brought about by:*

- an increase in gas expenses, as captains have a natural tendency to increase their ship’s speed while passing through high-risk zones;*
- Costs of re-routing to avoid high-risk zones;*
- higher insurance premiums;*
- supplementary security spending: “physical” protection of the ship (barbed wire, cameras, spotlights, etc), recourse to armed guards (EPEs from the national navy or private guards for ships under foreign flags);*
- payment of premiums to crews.”*

A little reminder of the world maritime context: *“The attacks led by pirates represent, moreover, a major risk for*
appendices

world commerce insofar as maritime transport, which provides 90% of merchandise transport worldwide, constitutes the backbone of the globalized economy. It's worth keeping in mind that around 8 billion tonnes of merchandise transit maritime channels, while more than 50,000 ships cross the seas daily. French companies transport some 15 million passengers each year on average, and 72% of the imports and exports of France take place through maritime channels."

Regarding commerce, it goes without saying that it doesn't work without freedom: "Finally, piracy flagrantly violates the secular principle of freedom of the seas in preventing – or rendering particularly risky – travel through certain zones."

Warning, we must eliminate the fear from our heads: "*A false debate: reference to mercenaries. The reticence of our country with regard to private security corporations is of an essentially psychological nature. We must dissipate the shadow surrounding mercenaries. For a long time – and surely still today – private security corporations have suffered from the confusion between what they do and actions carried out by mercenaries. To entertain such a confusion comes from a certain intellectual dishonesty and a double lack of comprehension of reality. In this respect, the typical reference to the acts, shortcomings, and decline ascribable to the American security company Blackwater (now Academi) in Iraq or in Afghanistan is groundless once one aims to debate the place for and functions of private security corporations in an honest and unbiased fashion. For the private agents who provide protection to the ships, this isn't a matter of participating in an armed conflict in an attempt to get rich; it is simply a matter of offering a complementary alternative to the public*

in terms of protection of a strictly private activity."

After the rapporteur's presentation, a debate ensued for opinions, and apparently the parliament was not convinced: *"Let's hold in our minds that this text will offer the opportunity for a second career for many soldiers from the Foreign Legion or Navy commandoes. It will of course not be easy for ship captains to exercise authority over these types. The mercenaries are not choir boys!"*

This book contextualizes those commonly known as Somali pirates, who take hostages, and plunder ships in their territory, to survive, to strike back, and to protect against further dumping, dumping that over decades has caused environmental degradation of devastating proportions.

Demons in the media, source of wealth and growth for security companies, these displaced and dispossessed people demonstrate what it looks like to fight against colonialism today.

\$8

